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MICHAEL BODAK, JR., CLERK

APPENDIX.

**In the
Supreme Court of the United States.**

OCTOBER TERM, 1978.

No. 78-233.

**PERSONNEL ADMINISTRATOR OF THE
COMMONWEALTH OF MASSACHUSETTS ET AL.,
APPELLANTS,**

v.

**HELEN B. FEENEY,
APPELLEE.**

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS.**

**Appeal Docketed August 10, 1978.
Jurisdiction Noted October 10, 1978.**

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United States District Court for the District of Massachusetts.

No. 74-5061-T

CAROL A. ANTHONY

v.

COMMONWEALTH OF MASSACHUSETTS;
DIVISION OF CIVIL SERVICE OF THE
COMMONWEALTH OF MASSACHUSETTS;
EDWARD W. POWERS; NANCY B. BEECHER;
WAYNE A. BUDD; JOSEPH M. DUFFY;
RICHARD J. HEALEY; AND HELEN C. MITCHELL.

Docket Entries.

1974

November

4 TAURO, D.J. Complaint and application for
three-judge court, filed;
Affidavit of Plaintiff in support of TRO, filed;
Memo in support of TRO and three-judge
court, filed;

1974

November

- 4 Arguments; motion for TRO, allowed and issued at 3 P.M.
- 11 C.H.J., COFFIN, ORDER ENTERED: Designating D.J. CAMPBELL, D.J. MURRAY and D.J. TAURO as members of three judge panel copy to all counsel.
- 15 Deft., Albert E. Salt, Esq. Motion to intervene by aggrieved party, filed with affidavit of service.
- 25 Dfts' motion to dismiss, filed c/s.
Dft's motion to extend time to file memo in support of motion to dismiss, filed c/s.
- 22 Pltff's opposition to Salt's motion to intervene, filed c/s.

December

- 4 Pltf's opposition to defts' motion to dismiss, filed, c/s
- 4 Pltf's motion to extend time for filing of memorandum in opposition to deft's motion to dismiss, filed, c/s.
- 19 Motion by Aggrieved Party to Call Judicial Attention to the Fact that the Restraining Order Issued by the Court, as Presently Enforced, is in Violation of the Fourteenth Amendment. Filed. c/s.
- 26 Notice of conference for Feb. 11, 1975 at 10 A.M. to Messrs. Dignan, Reinstein, Mayo, Salt and Daly.

1975

February

- 11 TAURO, D.J.
Conference; agreed statement of facts and memoranda of law to be filed by April 1, 1975, reply briefs to be filed by April 8, 1975; Hearing on motion to dismiss and on the merits to be scheduled after reply briefs are filed; copy of House Bill #1777 submitted to the Court; hearing on motion to intervene; arguments; advisement.
- 11 TAURO, D.J. Motion to intervene denied. Mr. Salt, however, may file brief amicus curea; notice to all counsel.
- 13 Notice of hearing on the merits for April 14, 1975 at 10 A.M. to all counsel.
- 18 Motion to intervene as defts., by the Disabled Veterans of The United States, Department of Massachusetts and the Jewish War Veterans of the United States, Department of Massachusetts, filed. Copies to 3 Judge Panel.
- 18 Intervenors' motion to dismiss, filed, c/s. Copies to members of the Three Judge Panel.

March

- 3 Pltff's opposition to the motion to intervene of disabled veterans of the United States Dept. of Mass. and the Jewish War Veterans of the United States, Dept., of Mass. filed, c/s. Copies to Three Judge Panel.

1975

March

TAURO, D.J.

25 Motion to continue briefing and argument, filed, copies to Three Judge Panel; motion allowed, hearing continued; copy to members of panel.

31 The D.A.V. and the J.W.V., departments of Mass. oppose and protest the motions to continue briefing and argument, filed, c/s. Copies to members of the panel.

April

23 Motion for hearing on Intervenor's pleadings, filed, c/s. Copies to Three Judge Panel.

May

5 Letter dated May 2, 1975 to Judge Tauro from Mr. Ward, representing plaintiff, requesting conference; conference scheduled for 5-22-75 at 3 P.M., Mr. Ward to notify other counsel, including Mr. Salt, intervenor.

19 Pltff's motion to add Betty A. Gittes and Kathryn Noonan as Pltffs. filed, c/s (Copies to Three-judge panel.)

21 Pltfs' motion to consolidate for trial this action with *Feeney v. Commonwealth of Mass., ET AL*, CA 75-1991-T, filed with cs. Copies to 3-Judge panel.

22 TAURO, D.J. Case called for conference; to consolidate 75-1991-T with 74-5061-T, allowed; All discovery to be completed within four weeks, agreed statement of facts to be filed two weeks after completion of all discovery and briefs and memoranda to be filed four weeks after agreed statement of facts are

1975

May

22 are filed; pre-trial order to issue for hearing in September. Motion to intervene, denied but intervenor allowed to file his brief. Motion to amend complaint by adding party plaintiffs, allowed.

23 TAURO, D.J. May 23, 1975 Procedural order issued. Copies to counsel.

TAURO, D.J.

28 Pre-Trial order issued for hearing on Sept. 5, 1975 at 11 A.M. to all counsel.

June

5 Deft's motion to dismiss, (Copies to Three Judge Panel) filed, c/s.

16 Pltff's opposition to deft's motion to dismiss, filed, c/s. copies to Three Judge Panel.

July

1 Motion of the parties to have to July 17, 1975 to file agreed statement to facts, filed.

2 TAURO, D.J., Motion of parties for modification of Order establishing date (July 17, 1975) for filing agreed statement of facts, "ALLOWED." Copies to Three Judge Panel.

17 Agreed Statement of Facts, filed. Copies to Three-Judge Panel

17 Exhibits 1-50; 51-86; 61; 93; 113-168, filed.

17 Exhibits 90-112 and 91 filed.

21 Motion of parties for modification of Order for the filing of Briefs and for permission to file reply Briefs, filed. Copies to Three Judge Panel.

1975

July

23

TAURO, D.J., Motion of parties for modification of order for the filing of briefs and for permission to file reply briefs, "ALLOWED." Copies to counsel.

August

4

Motion of Parties for modification of order for the filing of Briefs and for the filing of reply Briefs, filed.

6

TAURO, D.J., in re motion of parties for modification of order for the filing of briefs and for the filing of reply briefs; motion is ALLOWED. Copies to Messers Ward, Reinsteins, Posner and Salt.

8

Motion of parties for modification of order for the filing of Briefs and the filing of reply briefs, filed.

8

Brief for the defendant FILED cs.

8

TAURO, D.J., Motion of parties for modification of order for the filing of briefs and for the filing of reply briefs, "Allowed." Copies to counsel.

13

Brief of the plaintiffs, filed Copies to the Three Judge Panel.

14

TAURO, D.J., Pltffs' motion to extend time to file briefs to Aug. 20, 1975, filed and allowed; counsel notified.

15

Letter to Judge Tauro, dated Aug. 14, 1975, from Stephen B. Perlman, Esq. re submitting corrections in the agreed statements of facts, filed. copies to be filed Monday 18, 1975 for a 3 Judge Panel

15

Reply Brief for the defts., filed, c/s. Copies to 3 Judge Panel.

1975

August

18

Letter to Judge Tauro, dated Aug. 15, 1975, from A.A.G. Posner and Stephen B. Perlman, Esq. Re After discussion, counsel are in agreement that items one through six have been addressed in the briefs and agreed statements of fact already submitted by the parties, Further, counsel agree that the remaining items (seven through eleven) are not applicable because the above-entitled cases do not involve witnesses or presentation of other evidence. Counsel therefore request that the Court consider the documents already filed by the parties as meeting the requirements of a pre-trial memorandum, filed.

20

Reply brief of the Plaintiffs, filed; copy to members of the Three-Judge panel.

28

Letter to Clerk Doherty, dated Aug. 25, 1975, from Eleanor D. Acheson, Re Requesting a notification from your office should Judge Tauro deny the request and desire a pre-trial memorandum for the September 5, 1975 per-trial conference, filed.

September

5

Four copies of errata respecting the Brief of the pltffs and the reply Brief of the pltffs., filed. Copies to Three-Judge Panel.

5

Letter to Judge Tauro, dated Sep. 5, 1975, from Stephen B. Perlman Re Four additional copies each of the Brief of the Pltffs and the Reply Brief of the pltffs. The copies are identical in all respects to those filed on Aug. 13, 1975, and Aug. 20, 1975, respectively, except that (1) the copies have been

1975

September

- 5 corrected to reflect the errata furnished to the Court by letter dated Sep. 4, 1975, and (2) the enclosed copies of the Brief of the plttfs., have been photocopied on both sides of each page, filed. Copies to Three-Judge Panel.
- 5 Pltff's Reply Brief, filed, c/s. Corrected
- 5 Pltff's Brief corrected, filed, c/s.
- 5 TAURO, D.J., Pre-Trial Conference; Date to be Set for Hearing on Merits in October by Three-Judge Panel.
- 9 Notice of trial on merits for Oct. 22, 1975 at 2:15 P.M. to members of three judge panel and all counsel.

October

- 15 TAURO, D.J., ORDER: CA 74-5061-T and CA 75-1991-T Take notice that the above-entitled hearing on October 22, 1975 at 2:15 PM before CAMPBELL C.J., MURRAY, D.J. have been rescheduled for hearing on Wednesday, November 19, 1975 at 2:15 PM in Courtroom No. 2 12th Floor, U.S. Post Office & Courthouse, Boston, Mass., ENTERED. Copies to counsel and Three Judge Panel.

November

- 13 Notice sent, via certified mail, to Gov. Dukakis and Atty. General Bellotti in re Three-Judge Panel hearing on Wed., November 19, 1975 at 2:15 PM, pursuant to the provisions of 18 U.S.C. § 2284 (2).

1975

November

- 19 TAURO, D.J. Case called for hearing on merits; Atty. Ward to argue for all the plttfs; Atty. Posner to argue for all the defts; Argument; Court adjourns for deliberation at 3:13 PM.

1976

March

- 29 CAMPBELL, C.J., MURRAY, D.J., TAURO, D.J. Opinions (3) issued.
- CAMPBELL, C.J., TAURO, D.J. Judgment and order entered. cc/cl and West, Lawyer's Weekly, NCAIR, U.S. Law Week and Opinion Book.

**United States District Court
for the District of Massachusetts.**

No. 75-1991-T.

HELEN B. FEENEY

v.

COMMONWEALTH OF MASSACHUSETTS;
DIVISION OF CIVIL SERVICE OF THE
COMMONWEALTH OF MASSACHUSETTS;
EDWARD W. POWERS; NANCY B. BEECHER;
WAYNE A. BUDD; JOSEPH M. DUFFY;
RICHARD J. HEALEY; AND HELEN C. MITCHELL.

Docket Entries.

1975

May

- 20 Complaint filed.
- 22 TAURO, D.J. Case called for conference; motion filed in 75-5061-T to consolidate with this action allowed; all discovery to be completed within four weeks, agreed statement of facts to be filed two weeks thereafter and briefs and memoranda to be filed four weeks after that; pre-trial order to issue for hearing in September.
- 23 TAURO, D.J. May 23, 1975 Procedural order issued. Copies to counsel.
- 23 TAURO, D.J. Temporary Restraining Order issued. Copies to counsel.

1975

May

- 28 TAURO, D.J. Pre-trial order issued for hearing on Sept. 5, 1975 at 11 A.M.; copy to all counsel.

June

- 5 Defts' motion to dismiss, filed, c/s.
- 10 FRANK M. COFFIN, CH.J. U.S. COURT OF APPEALS ORDER ENTERED: May 6, 1975 Designating C.J. CAMPBELL, D.J. FRANK J. MURRAY, AND D.J. TAURO as members of three judge panel. Copy to all counsel.
- 12 TAURO, D.J. Motion of parties for modification of order establishing date for filing agreed statement of facts, "Allowed." Copies to Three Judge Panel.
- 16 Plaintiffs' opposition to defendants' motion to dismiss, filed, c/s. Copies to Three Judge Panel.
- 27 Motion to intervene as a deft., or for leave to file a Brief as Amicus Curiae, filed, c/s. Copies to Three Judge Panel.
- 27 Affidavit of John P. Swift in support of motion to intervene as a deft., or for leave to file a Brief as Amicus Curiae Brought by the American Legion, Department of Massachusetts, Inc., filed, c/s. Three Judge Panel copies sent to them.
- 27 Affidavit of Joseph F. Irvin, filed, c.s. Copies to Three-Judge Panel.

1975

June

- 27 Brief in support of motion to intervene as a deft., or for leave to file a brief as Amicus Curiae made by the American Legion, Department of Massachusetts, Inc., filed, c/s. Copies to Three Judge Panel.

July

- 1 Motion of the parties to have to July 17, 1975 to file agreed statement of facts, filed.
- 2 TAURO, D.J. Motion of parties for modification of Order establishing date (July 17, 1975) for filing agreed statement of facts, "ALLOWED." Copies to Three Judge Panel.
- 7 Plaintiff's Opposition to the Motion to Intervene of the American Legion, Dept. of Mass., Inc., filed c/s. Copies to Three Judge Panel Memorandum in opposition to the Motion of the American Legion to Intervene as a Deft filed, copies to Three Judge Panel.

June

- 27 TAURO, D.J. Motion to Intervene as a Deft. or for leave to file a Brief as Amicus Curiae "Motion to file Amicus brief ALLOWED, Motion otherwise DENIED. Copies to Messrs. Ward, Reinstein, Posner and Curtin.

July

- 17 Agreed Statement of Facts, filed. Copies to Three-Judge Panel.
- 17 Exhibits 1-50, filed.
- 17 Exhibits 51 through 84, filed.

1975

July

- 17 Exhibits 61, filed.
- 17 Exhibits 90 through 112, filed.
- 17 Exhibits 91 filed.
- 17 Exhibits 93 filed.
- 17 Exhibits 113 through 168, filed.
- 22 Motion of parties for modification of Order for the filing of Briefs and for permission to file reply briefs, filed. Copies to Three Judge Panel.
- 23 TAURO, D.J. Motion of parties for modification of order for the filing of briefs and for permission to file reply briefs, "ALLOWED." Copies to counsel.

August

- 4 Motion of Parties for modification of Order for the filing of Briefs and for the filing of reply Briefs, filed.
- 6 TAURO, D.J. In re motion of the parties for modification of the order for the filing of briefs and for the filing of reply briefs, motion is ALLOWED. Copies to Messrs. Ward, Reinstein, Posner and Curtin.
- 8 Motion of Parties for modification of order for the filing of Briefs and for the filing of reply Briefs, filed.
- 8 Brief for the defendant FILED cs.
- 8 TAURO, D.J. Motion of parties for modification of order for the filing of briefs and for the filing of reply briefs, "ALLOWED." Copies to Three Judge Panel.

1975

August

- 11 Amicus Curiae brief of the American Legion Department of Mass. Inc., in support of the constitutionality of the Massachusetts Veterans' Preference Statute FILED with cs.
- 13 Brief of the plaintiffs, filed. Copies to the Three Judge Panel.
- 14 TAURO, D.J. Pltffs' motion extending time to Aug. 20, 1975 to file reply briefs, filed and allowed; counsel notified.
- 15 Reply brief for the defts, filed, c/s.
- 20 Reply brief of the plaintiffs, filed; copy to members of the Three-Judge Panel.

September

- 5 Four copies of errata respecting the brief of the pltffs., and the reply brief of the pltffs., filed; copy to members of the Three-Judge Panel.
- 5 Letter to Judge Tauro, dated Sep. 5, 1975, from Stephen B. Perlman Re Four additional copies each of the brief of the pltffs., and the Reply Brief of the pltffs. The copies are identical in all respects to those filed on Aug. 13, 1975, and Aug. 20, 1975, respectfully, except that (1) the copies have been corrected to reflect the errata furnished to the Court by letter dated Sep. 4, 1975, and (2) the copies of the Brief of the pltffs., have been photocopied on both sides of each page, filed, Copies to Three-Judge Panel.
- 5 Pltffs' Reply Brief, filed, c/s. (corrected)

1975

September

- 5 Pltffs' Brief corrected, filed, c/s.
- 5 TAURO, D.J. Pre-Trial Conference; Date to be Set for Hearing on Merits in October by Three-Judge Panel.
- 9 Notice of hearing on the merits for Oct. 22, 1975 at 2:15 P.M. to members of three judge court panel and all counsel.

October

- 15 TAURO, D.J. (CA 74-5061-T AND CA 75-1991-T) ORDER ENTERED: Take notice that the above-entitled hearing on October 22, 1975 at 2:15 PM before CAMPBELL, C.J., MURRAY, D.J. AND TAURO, D.J. have been rescheduled for hearing on Wednesday, November 19, 1975 at 2:15 PM in Courtroom No. 2, 12th Floor, U.S. Post Office & Courthouse, Boston Mass. Copy to counsel and members of Panel.
- 19 TAURO, D.J. Case called for hearing on merits; Atty. Ward to argue for all the pltffs; Asty Posner to argue for all the defts; Argument; Court adjourns for deliberation at 3:13 PM.

1976

March

- 29 CAMPBELL, C.J., MURRAY, D.J., TAURO, D.J. Opinions (3) filed.
- CAMPBELL, C.J., TAURO, D.J. Judgment and order entered. cc/cl and West, Lawyer's Weekly, NCAIR, U.S. Law Week and Opinion Book.

1976

April

- 5 Copy of letter to Representative Hogan from Mr. Irvin filed with attachments.
- 6 Copy of letter to Editor, Herald American from Mr. Irvin filed.

May

- 25 Defts' notice of appeal filed, c/s.
Motion for relief from judgment filed, c/s.
Motion for stay of judgment and order pursuant to Supreme Court Rule 18 filed, c/s.
Memorandum of points and authorities in support of motion for relief from judgment and stay of judgment and order pursuant to Supreme Court Rule 18 filed, c/s.
Motion to file a late affidavit filed, c/s. Copies of above to 3 Judge Court.
Letter to the Clerk from Mr. Bellotti filed.

June

- 1 Motion for continuance . . . filed, assented to. Copies to 3-Judge Court.
- 3 TAURO, D.J. Above motion allowed.
- 4 Affidavit of WALLACE H. KOUNTZE, filed and copies to members of three-judge panel.
- 10 Counsel notified of hearing on 6-23-76 at 2:15 PM.
- 14 Pltffs' opposition to Dfts' motion for stay of judgment; opposition to Dfts' motion for relief from judgment and motion for leave to extend time for pltff to file a consolidated memo and additional affidavits, filed c/s, copy to members of three-judge panel.
- 16 Supplemental motion for relief from judgment filed, c/s. Copies to three-judge panel.

1976

June

- 16 TAURO, D.J. Order entered: "All memoranda and related materials dealing with the matters to be taken up at the hearing scheduled for Wednesday, June 23, 1976 must be filed by the close of business, Monday, June 21, 1976." Copy to counsel and members of the three-judge panel.
- 21 Deft's memo in support of supplemental motion for relief from judgment filed, c/s.
- 22 Stipulation filed.
Memo in opposition to defts' motions for relief from judgment under Rule 60(b) and motion for stay of judgment and order pursuant to Supreme Court Rule 18 filed, c/s.
- 23 Affidavit of Francis X. Bellotti filed, c/s.
- 23 CAMPBELL, C.J., MURRAY, D.J. AND TAURO, D.J. Hearing on various motions; arguments; motion for reconsideration and to modify injunction, denied; motion for stay pending appeal, granted; order to enter.
- 25 Letter to the Clerk from Mr. Reinstein with attached copies of legislation filed, cc/Three Judge Court.
- 28 TAURO, D.J. Order entered, denying motion for relief from judgment, denying motion for relief (supplemental) from judgment, and taking no action on motion for stay. cc/cl.
- August
- 2 Judgment and Order, Notice of Appeal forwarded to the Supreme Court of the United States.

1976

November

- 10 Letter from Helen Taylor of the Supreme Court w/ attached opinion, filed.

1977

October

- 19 01 CAMPBELL, C.J., TAURO, D.J., MURRAY, S.D.J. Order for filing briefs and for Oral argument on 11/29/77 at 2:15 PM entered. cc/Three Judge Court and counsel.

November

- 7 02 P's motion, assented to, for modification of order establishing briefing schedule and to continue hearing, filed; copies to members of Three-Judge Court Panel.
- 9 TAURO, D.J. Motion, No. 2, allowed; hearing continued to Wed. Dec. 14, 1977 at 2:15 PM, copy to counsel and members of three-judge court panel.
- 10 03 Certified copy of judgment from Supreme Court filed.
- 28 04 Defts' brief filed, c/s. Copies to three judge Court.
- 05 Pltf's supplementary memo filed, c/s.
- 06 Pltf's motion for leave to amend and supplement complaint filed, c/s.
- 07 Memo in support of 06 filed, c/s.
- Copies of 05, 06 and 07 to three judge Court.
- 30 08 Amicus brief of American Legion filed, c/s. Copies to three judge Court.
- 09 Ds' opposition to P's motion for leave to amend and supplement complaint, filed c/s.
- 10 Memo in support of No. 09, filed c/s.

1977

November

- 30 Copies of Nos. 09 and 10 to members of the panel.

December

- 5 11 Reply brief of defts' filed, c/s. Copies to 3 judge Court.
- 12 Pltf's reply memo filed, c/s. Copies to 3 judge Court.
- 6 13 CAMPBELL, C.J., TAURO, D.J., MURRAY, S.D.J. Order entered setting argument on pltf's motion to amend for 12/14/77 at 2:15 PM, and for filing memoranda by 12/13/77 at 4:00 PM cc/cl and three judge Court. Telephone notice to Messrs. Ward, Kiley and Adkins.
- 8 14 Pltf's motion for clarification filed, c/s. Copies to 3 judge Court.
- 9 15 CAMPBELL, MURRAY AND TAURO, ORDER ENTERED: "In response to plaintiff Feeney's 'Motion for clarification' the parties are advised to brief any substantive issues to be considered by the court together with the procedural issues in determining whether the motion is to be allowed."; copy to counsel and three judge court panel.
- 13 16 Supplemental memo in support of plaintiff's motion for leave to amend and supplement the complaint. c/s.
- 17 Memo. of defts. in opposition to pltf.'s motion for leave to amend and supplement the complaint.

1977

December

- 14 CAMPBELL, C.J., TAURO, D.J., MURRAY, S.D.J. (M), CURRY, REPORTER, THREE JUDGE COURT HEARING; ARGUMENTS; ON 1) MOTION BY PLTF TO AMEND PLEADINGS; 2) REMAND BY U.S. SUPREME COURT IN LIGHT OF CASE OF WASHINGTON V. DAVIS, ADVISEMENT.

1978

MAY

- 3 18 CAMPBELL, C.J., TAURO, D.J., MURRAY, S.D.J. Opinions filed (Main opinion by Tauro, D.J., Concurring opinion by Campbell, C.J., dissenting opinion by Murray, S.D.J.) cc/cl and West, Lawyer's Weekly, U.S. Law Week, Commerce Clearing House, NCAIR and Opinion Book & 3 judge court.
- 19 CAMPBELL, C.J., TAURO, D.J. Judgment and Order entered: 1. Judgment for Comm. of Mass. and Division of Civil Service . . . because these depts' are not 'persons' . . . 2. Judgment for pltf against the Mass. Director of Civil Service and the memoes of the Mass. Civil Service Commission . . . IT IS ORDERED that: (a) The Mass. Director of Civil Service and the members of the Mass. Civil Service Commission are hereby permanently enjoined from utilizing Mass Gen Laws ch. 31, § 23 (1971) in any future selection of persons to fill civil service positions with the Commonwealth and (b) This

1978

May

- 3 injunction shall have no effect upon the continued status of any individual in a permanent civil service position who holds that position on the date of this injunction, same distribution as 18.

June

- 13 20 Notice of appeal to the Supreme Court of the United States, FILED by depts. cs.
- 30 Certified copy of docket entries and pleadings listed on index in file forwarded to the U.S. Supreme Court, Wash., D.C.

October

- 16 Rec'd. cert. copy of order of Supreme Court noting probable jurisdiction in this case, filed.

United States District Court for the District of Massachusetts.

No. 74-5061-T.

[Title omitted in printing.]

Complaint and Application for a Three-Judge Court.

The plaintiff alleges as follows:

COUNT I

Jurisdiction and Venue

1. Plaintiff is a female resident and member of the bar of the Commonwealth of Massachusetts (Commonwealth).

2. The defendant Division of Civil Service (Division) is an executive and administrative department of the Commonwealth created under the provisions of Mass. G.L. c. 13, § 2, and by that same statute placed under the supervision and control of the Director of Civil Service (Director) and the Civil Service Commission (Commission). Said Division is charged with administering and enforcing the provisions of the Massachusetts Civil Service Law, Mass. G.L. c. 31.

3. The defendant Edward W. Powers is a resident of the Commonwealth and the Director and as such is an officer of the Commonwealth and administrative and executive head of the Division. This action is brought against him in his official capacity as Director.

4. The defendants Nancy B. Beecher, Wayne 7. Budd, Joseph M. Duffy, Richard J. Healy and Helen C. Mitchell and

each of them is a resident of the Commonwealth and a member of the Commission; and together they comprise the Commission. This action is brought against these defendants and each of them in their official capacities as members of the Commission.

5. This civil action arises under the Constitution of the United States and under 42 U.S.C. § 1983. The amount in controversy, exclusive of interest and costs, exceeds the sum or value of \$10,000.

6. This is an action for declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202 commenced to redress the deprivation, under color of the Massachusetts Civil Service Law, Mass. G.L. c. 31, and the rules and regulations promulgated thereunder, of rights of the plaintiff secured to her by the Fourteenth Amendment to the Constitution of the United States.

7. There exists an actual controversy between the plaintiff and the defendants as to the constitutionality of certifying names of persons for employment pursuant to an eligible list for permanent appointment to positions classified Counsel I. A copy of the present list, which is to be amended, is attached hereto and marked "A" and is hereinafter referred to as "the Counsel I Eligible List".

8. Jurisdiction over the claim alleged is thus conferred upon this court by the provisions of 28 U.S.C. §§ 1331(a) and 1343(3).

9. This court is the proper venue for adjudication of the claim alleged by virtue of the provisions of 28 U.S.C. § 1391(b).

Statement of Claim

10. The Division, the Director and the Commission and each of them are charged by the law of the Commonwealth

with the administration and enforcement of the Civil Service Laws of the Commonwealth (G.L. c. 31) which set forth the requirements and procedures to be followed in filling vacancies in the vast majority of the jobs available in the employ of the Commonwealth, its departments, divisions and agencies. As part of these general duties, these defendants and each of them are charged with enforcement of the so-called Veterans' Preference Statute (G.L. c. 31, §§ 21-25) which is a part of the Civil Service Laws of the Commonwealth.

11. Applicants for employment in permanent positions governed by the Civil Service Laws of the Commonwealth are required to undergo some form of competitive examination for such positions. After the competitive examination has been graded, all persons receiving a passing grade are placed upon an eligible list for the position or positions concerned.

12. Appointing authorities of the Commonwealth are required by law to comply with the following procedure in filling vacancies for permanent jobs governed by the Civil Service Laws of the Commonwealth: (a) The appointing authority sends a requisition to the Director stating the number of vacancies which are required to be filled. (b) The Director then certifies, in order of their rank on the eligible list, candidates for the position. The entire list is not certified, rather the number certified is dependent upon the number of positions to be filled. (c) The appointing authority must select a person on the list certified to him. If there is one position to be filled, the appointing authority must select one name from the first three names on the eligible list. If there is more than one position to be filled, the appointing authority selects from a greater number of names in accordance with a formula set forth in Rule 14 of the Civil Service Rules, a copy of which rule is attached hereto and marked "B". Said greater number of names certified to the appointing authority are certified from

the eligible list in the order in which names are ranked on the list.

13. The effect of the Veterans' Preference Statute is to require that all disabled veterans and other veterans who have passed the examination be placed on the eligible list ahead of all other persons who also have passed the examination, which means that every veteran who passes will be certified to the appointing authority ahead of every non-veteran who passes.

14. The defendants have compiled a Counsel I Eligible List for permanent appointment to positions classified Counsel I which is attached hereto and marked "A". This Counsel I Eligible List is an open list which will be continually updated with the names of applicants who become eligible.

15. In 1974 the plaintiff, who is not a veteran, made an application for the competitive examination for permanent appointments to positions classified Counsel I. The Director found the plaintiff qualified for permanent appointment to positions classified Counsel I and placed her name on the eligible list for Counsel I positions.

16. The Director established the Counsel I Eligible List pursuant to the Veterans' Preference Statute by placing the names of the persons who passed the competitive examination for permanent appointment to positions classified Counsel I on the Counsel I Eligible List in the order of (1) disabled veterans, (2) other veterans, and (3) other applicants. Within each group, eligibles are listed in order of their scores on the examination with the highest names listed first.

17. Names will be certified to appointing authorities from the Counsel I Eligible List in the order in which the names appear on said list for permanent appointment to at least fourteen positions classified Counsel I.

18. Plaintiff ranks 57 on the Counsel I Eligible List. Plaintiff tied for the highest score of any person on the Counsel I Eligible List. Solely because of the operation of the Veterans'

Preference Statute 56 veterans rank ahead of plaintiff. No female ranks higher than 57 on the Counsel I Eligible List.

19. Although approximately 10 percent of those eligible for permanent appointment to positions classified Counsel I are female, no female including plaintiff will be certified to any appointing authority for such permanent appointment because of the operation of the Veterans' Preference Statute.

20. Virtually all persons presently holding permanent appointments to counsel positions in the classified civil service of the Commonwealth of Massachusetts are male. Almost all veterans in the Commonwealth are male. For the five-year period 1969 through 1973, approximately 55% of all males passing civil service examinations were veterans, while approximately 1% of all females passing civil service examinations were veterans. Of all veterans passing civil service examinations during the period 1969 through 1973, approximately 98% were males.

21. Defendants' enforcement of the Veterans' Preference Statute has operated and continues to operate to exclude virtually all qualified female applicants from certification for consideration for any permanent appointment to any Counsel I position in the classified civil service of the Commonwealth. Said enforcement has operated and continues to operate to exclude a significantly higher proportion of qualified female applicants from consideration for permanent appointments than it does qualified male applicants.

22. Plaintiff's grade on the unassembled competitive examination for permanent appointment to positions classified Counsel I is such that she would be in the first group certified to appointing authorities for consideration for permanent appointment to such positions but for the Veterans' Preference Statute and the rules and regulations of the Division implementing said Statute and their enforcement by the individual defendants in their official capacities. The salaries for posi-

tions classified Counsel I range from \$12,287.60 to \$15,579.20 per year.

23. The plaintiff has been informed by the Division that the Division will begin certifying names from the Counsel I Eligible List on or about November 5, 1974.

24. The Veterans' Preference Statute and the rules and regulations of the Division in implementing said Statute and their enforcement by the individual defendants in their official capacities deprive plaintiff of the equal protection of the law in violation of the Fourteenth Amendment to the United States Constitution in that they unlawfully discriminate in public employment on the basis of sex by systematically excluding virtually every qualified and eligible female applicant including plaintiff, from certification for consideration for permanent appointment to any Counsel I position in the classified civil service of the Commonwealth.

25. The pending certification described in Paragraph 23 hereof and all further certifications will cause irreparable harm to Plaintiff for which she has no plain and adequate remedy of law.

COUNT II

26. Plaintiff reasserts the averments of Paragraphs 1 through 23 and 25, inclusive, of this Complaint with the same force and effect as if herein set forth and repeated in full.

27. For many years the Commonwealth has excluded females from, or discriminated against females in filling, various positions in public employment including counsel positions. As a result, females continue to be underrepresented in those positions in the classified civil service of the Commonwealth which are most desirable in terms of salary, responsi-

bility and opportunity for advancement, including positions classified Counsel I.

28. Because of the Commonwealth's history of exclusion and discrimination against females in public employment, the defendants are under an affirmative constitutional duty to the plaintiff to eliminate every law, rule and regulation that has the effect of operating in practice to perpetuate the exclusion of, or discrimination against, qualified female applicants with respect to public employment, including the provisions for veterans' preference in the Massachusetts General Laws and in the rules and regulations of the defendant Division of Civil Service.

COUNT III

29. Plaintiff reasserts the averments of Paragraphs 1 through 23 and 25, inclusive, of this Complaint with the same force and effect as if herein set forth and repeated in full.

30. The United States of America has adopted various laws, regulations and practices expressly excluding females from the armed forces and expressly limiting opportunities for females in the armed forces with the effect that females have been and continue to be discouraged by federal law from joining or attempting to join the armed forces of the United States. Such laws and regulations include laws and regulations limiting the percentage of positions in the armed forces open to females, laws and regulations establishing stricter qualifications for females than for males seeking to join the armed forces, laws and regulations discriminating against females as to benefits, positions and promotions available to members of the armed forces, and laws and regulations excluding females from the service academies. Said laws and regulations have created an

environment which has discouraged and discourages females generally from joining the armed forces of the United States.

31. The Veterans' Preference Statute and the rules and regulations of the defendant Division implementing said Statute, and their enforcement by the individual defendants in their official capacities, deprive plaintiff of the equal protection of the law in violation of the Fourteenth Amendment to the United States Constitution in that they unlawfully discriminate in public employment on the basis of sex by the adoption of a qualification for public employment based on incorporating and perpetuating the sex discrimination expressly established by law and regulation in the armed forces of the United States.

WHEREFORE, plaintiff prays:

A. That a three-judge Court be convened pursuant to 28 U.S.C. §§ 2281 and 2284 to hear and determine this action upon at least five days notice of hearing to the Governor and Attorney General of the Commonwealth.

B. That the Court enter judgment declaring that the veterans' preference provisions of the Massachusetts General Laws and of the rules and regulations of the defendant Division implementing said provisions as applied to the eligible list for permanent appointments to positions classified Counsel I violate the Fourteenth Amendment to the United States Constitution and are invalid as so applied.

C. That the Court enter a preliminary injunction enjoining the Commonwealth, its agencies and divisions, including but not limited to the Division of Civil Service, from enforcing the veterans' preference provisions of Mass. G.L. c. 31, §§ 21-25, until this action can be heard and decided on the merits.

D. That the Court permanently enjoin the Commonwealth, its agencies and divisions, including but not limited to the Division of Civil Service, from enforcing the veterans' preference provisions of Mass. G.L. c. 31, §§ 21-25.

E. That the Court grant to plaintiff her costs and expenses of litigation.

F. That the Court grant to plaintiff such other relief as to the Court may seem meet and just.

By her attorneys,

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[Attachment A, entitled "Counsel I Eligible List," has been deleted from the Complaint and has been reproduced as Exhibit 9 to the Agreed Statement of Facts at page 152 of the Appendix.]

ATTACHMENT B.

CERTIFICATION OF OTHER ELIGIBLES

Rule 14.

1. Certification shall be made in the order of the standing on the eligible list, except as provided in Section 4 of this rule, as follows: —

For 1 vacancy,	3 names	For 4 vacancies,	6 names
2 vacancies,	4 names	5 vacancies,	7 names
3 vacancies,	5 names		

For each multiple of five vacancies, the same multiple of seven names; for vacancies from one to four, inclusive, over a multiple of five, additional names according to the above table.

**United States District Court
for the District of Massachusetts.**

No. 74-5061-T

[Title omitted in printing.]

Amended Complaint.

The plaintiffs allege as follows:

COUNT I

Jurisdiction and Venue

1. Plaintiffs are each female residents and members of the Bar of the Commonwealth of Massachusetts (the "Commonwealth").

2. The defendant Division of Civil Service (the "Division") is an executive and administrative department of the Commonwealth created under the provisions of Mass. G.L. c. 13, § 2, and by that statute placed under the supervision and control of the Director of Civil Service (the "Director") and the Civil Service Commission (the "Commission"). The Division is charged with administering and enforcing the provisions of the Massachusetts Civil Service Law, Mass. G.L. c. 31.

3. The defendant Edward W. Powers, a resident of the Commonwealth, is the present Director and is an officer of the Commonwealth and administrative and executive head of the

Division. This action is brought against him individually and in his official capacity as Director.

4. The defendants Nancy B. Beecher, Wayne A. Budd, Joseph M. Duffy, Richard J. Healy and Helen C. Mitchell and each of them is a resident of the Commonwealth and a member of the Commission, and together they comprise the Commission. This action is brought against these defendants and each of them individually and in their official capacities as members of the Commission.

5. This civil action arises under the Constitution of the United States and under 42 U.S.C. § 1983. The amount in controversy, exclusive of interest and costs, exceeds the sum or value of \$10,000.

6. This is an action for declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202 commenced to redress the deprivation, under color of the Massachusetts Civil Service Law, Mass. G.L. c. 31, and the rules and regulations promulgated thereunder, of rights of the plaintiffs secured to them by the Fourteenth Amendment to the Constitution of the United States.

7. There exists an actual controversy between the plaintiffs and the defendants as to the constitutionality of the hiring practice, prescribed by G.L. c. 31, which gives to qualified candidates for permanent positions in the Classified Civil Service who are veterans a preference in rank over non-veteran qualified candidates on the eligible lists from which certifications to permanent positions in the Classified Civil Service are made.

8. Jurisdiction over the claim alleged is thus conferred upon this court by the provisions of 28 U.S.C. § 1391(b).

9. This court is the proper venue for adjudication of the claim alleged by virtue of the provisions of 28 U.S.C. § 1391(b).

Statement of Claim

10. The Division, the Director and the Commission and each of them are charged by the law of the Commonwealth with the administration and enforcement of the Civil Service Laws of the Commonwealth (G.L. c. 31) which set forth the requirements and procedures to be followed in filling vacancies in the vast majority of the jobs available in the employ of the Commonwealth, its departments, divisions and agencies. As part of these general duties, these defendants and each of them are charged with enforcement of the so-called Veterans' Preference Statute (G.L. c. 31 §§ 21-25).

11. Applicants for employment in permanent positions governed by the Civil Service Laws of the Commonwealth are required to undergo some form of competitive examination for such positions. After the competitive examination has been graded, all persons receiving a passing grade are placed upon an eligible list for the position or positions concerned.

12. Appointing authorities of the Commonwealth are required by law to comply with the following procedure in filling vacancies for permanent jobs governed by the Civil Service Laws of the Commonwealth: (a) The appointing authority sends a requisition to the Director stating the number of vacancies which are required to be filled. (b) The Director then certifies, in order of their rank on the eligible list, candidates for the position. The entire list is not certified, rather the number certified is dependent upon the number of positions to be filled. (c) The appointing authority must select a person on the list certified to him. If there is one position to be filled, the appointing authority must select one name from the first three names on the eligible list. If there is more than one position to be filled, the appointing authority selects from a greater number of names in accordance with a formula set forth in Rule 14 of the Civil Service Rules, a copy of which rule

is attached hereto and marked "A". Said greater number of names certified to the appointing authority are certified from the eligible list in the order in which names are ranked on the list.

13. The effect of the Veterans' Preference Statute is to require that all disabled veterans and other veterans who have passed the examination be placed on the eligible list ahead of all other persons who also have passed the examination, which means that every veteran who passes will be certified to the appointing authority ahead of every non-veteran who passes.

14. The defendants compiled an eligible list for permanent appointment to positions classified Counsel I, a copy of which is attached hereto and marked "B" and is hereinafter referred to as "the Counsel I Eligible List."

15. In 1974 the plaintiffs, none of whom are veterans, made applications for the competitive examination for permanent appointments to positions classified Counsel I. The Director found each of the plaintiffs qualified for permanent appointment to positions classified Counsel I and placed the names of plaintiff Anthony and plaintiff Gittes on the eligible list for Counsel I positions. Plaintiff Noonan did not appear on the Counsel I Eligible List (Attachment "B") but is informed, believes and alleges that because the list was an open list her name would have been added to the list before any names were certified from the list to any appointing authority.

16. The Director established the Counsel I Eligible List pursuant to the Veterans' Preference Statute by placing the names of the persons who passed the competitive examination for permanent appointment to positions classified Counsel I on the Counsel I Eligible List in the order of (1) disabled veterans, (2) other veterans, and (3) other applicants. Within each group, eligibles were listed in order of their scores on the examination with the highest names listed first.

17. Names would have been certified to appointing authorities from the Counsel I Eligible List in the order in which the names appeared on said list for permanent appointment to at least fourteen positions classified Counsel I, were it not for the preliminary injunction previously entered in this action.

18. Plaintiff Anthony was ranked 57 on the Counsel I Eligible List. Plaintiff Anthony tied for the highest score (94) of any person on the Counsel I Eligible List. As a result of the operation of the Veterans' Preference Statute 56 male veterans were ranked ahead of plaintiff Anthony. No female was ranked higher than 57 on the Counsel I Eligible List. Plaintiff Gittes was ranked 76 on the Counsel I Eligible List. Plaintiff Gittes tied for the second highest score (92) of any person on the Counsel I Eligible List. Plaintiff Noonan also received a score of 92 but re-applied and was informed that her score would be adjusted to a 94, the highest score received by an applicant for Counsel I. As a result of the operation of the Veterans' Preference Statute 54 male veterans with equal or, in the case of 52 male veterans, lower scores were ranked ahead of plaintiff Gittes and plaintiff Noonan.

19. Although each of the plaintiffs received one of the two highest scores achieved on the Counsel I exam, not one of the plaintiffs was certified to any appointing authority for permanent appointment to Counsel I positions. Application of the Veterans' Preference Statute ranked each of the plaintiffs below all lower scoring and all male veterans so that each of the plaintiffs was excluded from any possibility of being considered for permanent Counsel I positions for which there were requisitions.

20. Although approximately 10% of those on the Counsel I Eligible List were female, the operation of the Veterans' Preference Statute placed each female on the eligible list in such a low position that she was excluded from any possibility

of being considered for permanent positions for which there were requisitions.

21. All persons presently holding permanent appointments to counsel positions in the Classified Civil Service of the Commonwealth of Massachusetts are male. Approximately 98% of all veterans in the Commonwealth are male. For the five-year period 1969 through 1973, approximately 55% of all males passing civil service examinations were veterans, while approximately 1% of all females passing civil service examinations were veterans. Of all veterans passing civil service examinations during the period 1969 through 1973, approximately 98% were males.

22. Defendants' enforcement of the Veterans' Preference Statute excluded virtually all qualified female applicants from consideration for any permanent appointment to any Counsel I position in the classified civil service of the Commonwealth. Said enforcement excluded a significantly higher proportion of qualified female applicants from consideration for permanent appointments than it did qualified male applicants.

23. Each of the plaintiffs' grades on the unassembled competitive examination for permanent appointment to positions classified Counsel I was such that she would have been certified to appointing authorities for consideration for permanent appointment to such positions but for the Veterans' Preference Statute and the rules and regulations of the Division implementing said Statute and their enforcement by the individual defendants.

24. The salaries for positions classified Counsel I range from \$12,287.60 to \$15,579.20 per year.

25. Were it not for the preliminary injunction entered in this action, the Division would have begun certifying names from the Counsel I Eligible List on or about November 5, 1974.

26. The Classified Civil Service of the Commonwealth includes many thousands of permanent positions. The Veterans' Preference Statute applies to each of these positions. Veterans' preference systematically excludes female applicants from those positions for which both men and women compete by establishing eligible lists which give absolute preference to veterans, virtually all of whom are male. Male veterans compete for a large number of the more desirable and higher paying permanent positions in the Classified Civil Service in numbers large enough to have the practical effect of excluding from consideration for appointment virtually all female applicants, including the plaintiffs. Each of the plaintiffs desires to be able to compete for any position in the Classified Civil Service without being eliminated from consideration by operation of the Veterans' Preference Act. The Veterans' Preference Act grants a preference to a disproportionate number of male applicants on the basis of a criterion that is related neither to ability nor to performance in permanent positions in the Classified Civil Service.

27. The actions of defendants in applying the Veterans' Preference Statute to place the name of the plaintiff Anthony on the Counsel I eligible list behind less qualified male veterans have humiliated and degraded her and caused her consequent mental distress and emotional anxiety. Plaintiff Anthony has thereby been damaged as a result of the unconstitutional actions of defendants under color of state law.

28. Plaintiff Anthony presently holds a provisional appointment in the Classified Civil Service of the Commonwealth and is interested in being able to compete equally with male candidates for permanent positions in the Classified Civil Service. Plaintiff Anthony will by operation of the Veterans' Preference Act be eliminated from consideration for any permanent position for which she applies and for which men and women compete. Plaintiff Anthony, having been eliminated from

consideration from Counsel I positions by operation of the Veterans' Preference Statute, is discouraged from applying for other permanent positions and thereby being subjected again to the humiliation and degradation and consequent mental distress and emotional anxiety caused by being excluded by reason of the operation of the Veterans' Preference Act. Plaintiff Anthony has suffered and continues to suffer mental distress and emotional anxiety from the Commonwealth's continued use of the Veterans' Preference Statute in the hiring process for all permanent positions in the Classified Civil Service.

29. The action of the defendants in applying the Veterans' Preference Statute to place the name of the plaintiff Gittes on the Counsel I eligible list behind less qualified male veterans have humiliated and degraded her and caused her consequent mental distress and emotional anxiety. Plaintiff Gittes has, thereby been damaged as a result of the unconstitutional actions of defendants under color of state law.

30. Plaintiff Gittes is interested in a career in state service and desires to be able to compete equally with male candidates for permanent positions in the Classified Civil Service. Plaintiff Gittes intends to apply for other permanent positions in the Classified Civil Service but will, by the operation of the Veterans' Preference Statute, be eliminated from consideration for any permanent position for which she applies and for which men and women compete. Plaintiff Gittes, having been eliminated from consideration from Counsel I positions by operation of the Veterans' Preference Act, is discouraged from applying for other permanent positions and thereby being subjected again to the humiliation and degradation and consequent mental distress and emotional anxiety caused by being excluded from consideration by reason of the operation of the Veterans' Preference Statute. Plaintiff Gittes has suffered and continues to suffer mental distress and emotional anxiety from

the Commonwealth's continued use of the veterans' preference in the hiring process for all permanent positions in the Commonwealth.

31. The actions of defendants in applying the Veterans' Preference Act to place the name of the plaintiff Noonan on the Counsel I eligible list behind less qualified male veterans have humiliated and degraded her and caused her consequent mental distress and emotional anxiety. Plaintiff Noonan has thereby been damaged as a result of the unconstitutional actions of defendants under color of state law.

32. Plaintiff Noonan presently holds a provisional appointment as a hearing examiner in the Classified Civil Service of the Commonwealth and, in addition to applying for Counsel I positions, will make application for a permanent position as a hearing examiner in the Classified Civil Service when the next examination for such a position is held.

33. Plaintiff Noonan is informed that no examination for permanent appointment to the position of hearing examiner has been held since 1967. It is likely that a notice of examination will be posted in the near future.

34. On information and belief, the majority of permanent positions of hearing examiner are filled by males.

35. When the next examination for permanent appointment to the position of hearing examiner is held, the defendants will apply the Veterans' Preference Statute to place on the eligible list for positions of permanent hearing examiner the names of male veterans who are less qualified than female applicants ahead of virtually all female applicants including plaintiff Noonan.

36. Plaintiff Noonan will be excluded from consideration for a permanent appointment as a hearing examiner by reason of the operation of the Veterans' Preference Statute in the same way she has already been excluded from consideration for a permanent appointment to a Counsel I position. Appli-

cation of the Veterans' Preference Statute to the position of hearing examiner will deprive the plaintiff Noonan of the equal protection of the law and due process in violation of the Fourteenth Amendment to the United States Constitution.

37. Plaintiff Noonan has suffered and continues to suffer mental distress and emotional anxiety from the defendant's continued application of the Veterans' Preference Statute in the hiring process for all permanent positions in the civil service and in particular for both Counsel I positions and the position of permanent hearing examiner for which she intends to apply.

38. The Veterans' Preference Statute and the rules and regulations of the Division in implementing said Statute and their enforcement by the individual defendants have deprived and continue to deprive the plaintiffs of the equal protection of the laws and of due process of law in violation of the Fourteenth Amendment to the United States Constitution in that they unlawfully discriminated in public employment on the basis of sex by systematically excluding qualified and eligible female applicants, including plaintiffs, from certification for consideration for permanent appointment to Counsel I positions in the Classified Civil Service of the Commonwealth and in that they continue to discriminate unlawfully in public employment on the basis of sex by systematically excluding qualified and eligible female applicants, including plaintiffs, from certification for considerations for permanent appointments to other positions in the Classified Civil Service of the Commonwealth.

39. The continued application of the Veterans' Preference Act to positions in the Classified Civil Service for which plaintiffs are interested in being able to compete equally with male candidates is causing irreparable harm to plaintiffs for which they have no plain and adequate remedy at law.

COUNT II

40. Plaintiffs reassert the averments of Paragraphs 1 through 39, inclusive, of this Complaint with the same force and effect as if herein set forth and repeated in full.

41. For many years the Commonwealth has excluded females from, or discriminated against females in filling, various positions in public employment including counsel positions and hearing examiner positions. As a result, females continue to be underrepresented in the positions in the Classified Civil Service of the Commonwealth which are most desirable in terms of salary, responsibility and opportunity for advancement, including positions classified Counsel I and hearing examiner.

42. Because of the Commonwealth's history of exclusion and discrimination against females in public employment, the defendants are under an affirmative constitutional duty to the plaintiffs to eliminate every law, rule and regulation that has the effect of operating in practice to perpetuate the exclusion of, or discrimination against, qualified female applicants with respect to public employment, including the provisions for veterans preference in the Massachusetts General Laws and in the rules and regulations of the defendant Division of Civil Service.

COUNT III

43. Plaintiffs reassert the averments of Paragraphs 1 through 39, inclusive, of this Complaint with the same force and effect as if herein set forth and repeated in full.

44. The United States of America has adopted various laws, regulations and practices expressly excluding females from the armed forces and expressly limiting opportunities for females

in the armed forces with the effect that females have been and continue to be discouraged by federal law from joining or attempting to join the armed forces of the United States. Such laws and regulations include laws and regulations limiting the percentage of positions in the armed forces open to females, laws and regulations establishing stricter qualifications for females than for males seeking to join the armed forces, laws and regulations discriminating against females as to benefits, positions and promotions available to members of the armed forces, and laws and regulations excluding females from the service academies. Said laws and regulations have created an environment which has discouraged and discourages females generally from joining the armed forces of the United States.

45. The Veterans' Preference Statute and the rules and regulations of the defendant Division implementing said Statute, and their enforcement by the individual defendants deprive plaintiffs of the equal protection of the law and due process in violation of the Fourteenth Amendment to the United States Constitution in that they unlawfully discriminate in public employment on the basis of sex by the adoption of a qualification for public employment based on incorporating and perpetuating the sex discrimination expressly established by law and regulation in the armed forces of the United States.

WHEREFORE, plaintiffs pray:

A. That a three-judge Court be convened pursuant to 28 U.S.C. §§ 2281 and 2284 to hear and determine this action upon at least five days notice of hearing to the Governor and Attorney General of the Commonwealth.

B. That the Court enter judgment declaring that the veterans' preference provisions of the Massachusetts General Laws and of the rules and regulations of the defendant Division implementing said provisions as applied to eligible lists for permanent appointments to positions in the Classified Civil Serv-

ice violate the Fourteenth Amendment to the United States Constitution and are invalid as so applied.

C. That the Court enter a preliminary injunction enjoining the Commonwealth, its agencies and divisions, including but not limited to the Division of Civil Service, from enforcing the veterans' preference provisions of Mass. G.L. c. 31, §§ 21-25, until this action can be heard and decided on the merits.

D. That the Court permanently enjoin the Commonwealth, its agencies and divisions, including but not limited to the Division of Civil Service, from enforcing the veterans' preference provisions of Mass. G.L. c. 31, §§ 21-25.

E. That judgment be entered against each individual defendant in favor of each plaintiff in the amount of one dollar (\$1.00) nominal damages.

F. That the Court order that the defendants undertake appropriate affirmative action in the hiring of female applicants for counsel positions so that the past effects of prior discrimination are eliminated.

G. That the Court grant to plaintiffs their costs and expenses of litigation.

H. That the Court grant to plaintiffs such further and other related relief as to the Court may seem meet and just.

By their attorneys,

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ATTACHMENT A.

CERTIFICATION OF OTHER ELIGIBLES

Rule 14.

1. Certification shall be made in the order of the standing on the eligible list, except as provided in Section 4 of this rule, as follows:—

For 1 vacancy,	3 names	For 4 vacancies,	6 names
2 vacancies,	4 names	5 vacancies,	7 names
3 vacancies,	5 names		

For each multiple of five vacancies, the same multiple of seven names; for vacancies from one to four, inclusive, over a multiple of five, additional names according to the above table.

[Attachment B, entitled "Counsel I Eligible List," has been deleted from the Amended Complaint and has been reproduced as Exhibit 9 to the Agreed Statement of Facts at page 152 of the Appendix.]

**United States District Court
for the District of Massachusetts.**

No. 75-1991-T

[Title omitted in printing.]

Complaint.

The plaintiff alleges as follows:

COUNT I

Jurisdiction and Venue

1. The plaintiff is a female resident of the Commonwealth of Massachusetts (the "Commonwealth").

2. The defendant Division of Civil Service (the "Division") is an executive and administrative department of the Commonwealth created under the provisions of Mass. G.L. c. 13, § 2, and by that statute placed under the supervision and control of the Director of Civil Service (the "Director") and the Civil Service Commission (the "Commission"). The Division is charged with administering and enforcing the provisions of the Massachusetts Civil Service Law, Mass. G.L. c. 31.

3. The defendant Edward W. Powers, a resident of the Commonwealth, is the present Director and is an officer of the Commonwealth and administrative and executive head of the Division. This action is brought against him in his official capacity as the Director.

4. The defendants Nancy B. Beecher, Wayne A. Budd, Joseph M. Duffy, Richard J. Healy and Helen C. Mitchell, residents of the Commonwealth, are members of the Commission and together comprise the Commission. This action is brought against these defendants in their official capacities as members of the Commission.

5. This civil action arises under the Constitution of the United States and under 42 U.S.C. § 1983. The amount in controversy, exclusive of interest and costs, exceeds the sum or value of \$10,000.

6. This is an action for declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202 commenced to redress the deprivation, under color of the Massachusetts Civil Service Law, Mass. G.L. c. 31, and the rules and regulations promulgated thereunder, of rights of the plaintiff secured to her by the Fourteenth Amendment to the Constitution of the United States.

7. There exists an actual controversy between the plaintiff and the defendants as to the constitutionality of the hiring practice, prescribed by G.L. c. 31, which gives to qualified candidates for permanent positions in the Classified Civil Service who are veterans a preference in rank over non-veteran qualified candidates on the eligible lists from which certifications to permanent positions in the Classified Civil Service are made.

8. Jurisdiction over the claim alleged is thus conferred upon this court by the provisions of 28 U.S.C. §§ 1331(a) and 1343(3).

9. This court is the proper venue for adjudication of the claim alleged by virtue of the provisions of 28 U.S.C. § 1391(b).

Statement of Claim

10. The Division, the Director and the Commission and each of them are charged by the law of the Commonwealth

with the administration and enforcement of the civil service laws of the Commonwealth which set forth the requirements and procedures to be followed in filling vacancies in the vast majority of the jobs available in the employ of the Commonwealth, its departments, divisions and agencies. As part of these general duties, these defendants and each of them are charged with enforcement of the so-called Veterans' Preference Statute (G.L. c. 31, §§ 21-25).

11. Applicants for employment in permanent positions governed by the civil service laws of the Commonwealth are required to undergo some form of competitive examination for such positions. After the competitive examination has been graded, all persons receiving a passing grade are placed upon an eligible list for the position or positions concerned.

12. Appointing authorities of the Commonwealth are required by law to comply with the following procedure in filling vacancies for permanent jobs governed by the civil service laws of the Commonwealth: The appointing authority sends a requisition to the Director stating the number of vacancies which are required to be filled. The Director then certifies candidates for the position in order of their rank on the eligible list. If there is one position to be filled, the appointing authority must select one of the first three available candidates on the eligible list. If there is more than one position to be filled, the appointing authority must select from the number of the highest ranking available candidates on the eligible list which is prescribed by Rule 14 of the Civil Service Rules, a copy of which rule is attached hereto and marked "A".

13. The effect of the Veterans' Preference Statute is to require that all veterans who have passed the examination be placed on the eligible list ahead of all other persons who also have passed the examination.

14. The plaintiff, who is not a veteran, made application for the competitive examination for permanent appointment to one position classified Head Administrative Assistant at the Solomon Mental Health Center in the Department of Mental

Health of the Commonwealth. The plaintiff achieved the third highest score (92.32) on the competitive examination for Head Administrative Assistant held on February 24, 1973. The Director found the plaintiff qualified for permanent appointment to that position and placed her name on the eligible list therefor, a copy of which is attached hereto and marked "B" and is hereinafter referred to as "the Head Administrative Assistant Eligible List".

15. The Director established the Head Administrative Assistant Eligible List on August 24, 1973, pursuant to the Veterans' Preference Statute by placing the names of the persons who passed the competitive examination for permanent appointment to the position classified Head Administrative Assistant on the Head Administrative Assistant Eligible List in the order of (1) disabled veterans, (2) other veterans, and (3) other applicants. Within each group, eligible persons were ranked in order of their scores on the examination with those receiving the highest scores ranked first.

16. The Director placed the name of the plaintiff eleventh on the Head Administrative Assistant Eligible List. Pursuant to the Veterans' Preference Statute, he placed on the Head Administrative Assistant Eligible List ahead of the name of the plaintiff the names of eight male veterans who received lower scores on the competitive examination than the plaintiff. Pursuant to the Veterans' Preference Statute, he thereafter added to the Head Administrative Assistant Eligible List ahead of the name of the plaintiff the names of three additional male veterans who received lower scores on the competitive examination than the plaintiff. The plaintiff is now ranked fourteenth on the Head Administrative Assistant Eligible List. But for the Veterans' Preference Statute and its application by the defendants, the plaintiff would be ranked third on the Head Administrative Assistant Eligible List.

17. Pursuant to Rule 14 of the Civil Service Rules, the Director certified to the appointing authority for the one permanent position as Head Administrative Assistant the first three names on the Head Administrative Assistant Eligible List, each of which was the name of a male veteran. But for the Veterans' Preference Statute, the Director would have certified the name of the plaintiff.

18. The position of Head Administrative Assistant has not yet been filled.

19. Twelve of the fifteen males on the Head Administrative Assistant Eligible List are veterans. None of the four females on the Head Administrative Assistant Eligible List is a veteran.

20. The plaintiff, who is not a veteran, made application for the competitive examination for permanent appointment to positions classified Administrative Assistant. The plaintiff received a score of 87 on the competitive examination for Administrative Assistant held on May 18, 1974. The Director found the plaintiff qualified for permanent appointment to positions classified Administrative Assistant and placed her name on the eligible list therefor, a copy of which is attached hereto marked "C" and is hereinafter referred to as "the Administrative Assistant Eligible List".

21. The Director established the Administrative Assistant Eligible List in April, 1975, pursuant to the Veterans' Preference Statute by placing the names of the persons who passed the competitive examination for permanent appointment to positions classified Administrative Assistant on the Administrative Assistant Eligible List in the order of (1) disabled veterans, (2) other veterans, and (3) other applicants. Within each group, eligible persons were ranked in order of their scores on the examination with those receiving the highest scores ranked first.

22. The Director placed the name of the plaintiff seventieth on the Administrative Assistant Eligible List. Pursuant to the Veterans' Preference Statute, he placed on the Administrative Assistant Eligible List ahead of the name of the plaintiff the names of fifty-two veterans, fifty of whom received lower

scores than, and two of whom received equal scores to, the plaintiff on the competitive examination. But for the Veterans' Preference Statute and its application by the defendants, the plaintiff would be tied for seventeenth on the Administrative Assistant Eligible List.

23. As of April 23, 1975, there were requisitions for seven permanent positions classified as Administrative Assistant to be filled from the Administrative Assistant Eligible List. All additional requisitions for permanent positions classified as Administrative Assistant through April, 1977, will be filled from the Administrative Assistant Eligible List.

24. On May 13, 1975, the Director began certifying names to appointing authorities from the Administrative Assistant Eligible List.

25. By operation of the Veterans' Preference Statute and the rules and regulations of the Division implementing said Statute and by reason of their enforcement by the defendants, the plaintiff is excluded from any reasonable possibility of being in the group of eligible persons from which the respective appointing authorities will be required to fill the seven permanent positions classified as Administrative Assistant for which there were requisitions as of April 23, 1975. The seven permanent positions classified as Administrative Assistant for which there were requisitions as of April 23, 1975, have not yet been filled.

26. By operation of the Veterans' Preference Statute and the rules and regulations of the Division implementing said Statute and by reason of their threatened enforcement by the defendants, the plaintiff has a significantly reduced opportunity of being in the group of eligible persons from which appointing authorities will be required to fill permanent positions classified as Administrative Assistant for which requisitions are issued through April, 1977. But for the Veterans' Preference Statute and the rules and regulations of the Divi-

sion implementing said Statute, the plaintiff would be in the group of eligible persons from which appointing authorities will be required to fill permanent positions classified as Administrative Assistant prior to April, 1977.

27. Three of the sixteen eligible persons who received higher scores than plaintiff are also female persons, are also not veterans and are ranked on the Administrative Assistant Eligible List sixty-fifth, sixty-seventh and sixty-eighth. But for the Veterans' Preference Statute and the rules and regulations of the Division implementing said Statute these other female eligible persons would be ranked fifth, tied for tenth and tied for twelfth. The Veterans' Preference Statute and the rules and regulations of the Division implementing said Statute and their enforcement by defendants has excluded these other eligible female persons from being in the group of eligible persons from which respective appointing authorities will be required to select persons for appointment to permanent positions classified as Administrative Assistant.

28. Approximately 20% of those persons qualified for appointment to permanent positions classified Administrative Assistant are female, but no female will be in the group of persons from which appointing authorities will be required to select persons for appointment to the permanent positions classified as Administrative Assistant for which seven requisitions are presently outstanding.

29. Sixty-two of the sixty-three veterans on the Administrative Assistant Eligible List are males. Of the 136 males on the Administrative Assistant Eligible List, sixty-two (or 45.6%) are veterans. Of the 27 females on the Administrative Assistant Eligible List, only one (or 3.7%) is a veteran.

30. About 98% of all veterans in the Commonwealth are male. For the five-year period 1969 through 1973, approximately 55% of all males passing civil service examinations were veterans, while approximately 1% of all females passing

civil service examinations were veterans. Of all veterans passing civil service examinations during the period 1969 through 1973, approximately 98% were males.

31. Defendants' enforcement of the Veterans' Preference Statute excludes most qualified female applicants from consideration for appointment to permanent Administrative Assistant positions in the classified civil service of the Commonwealth. Said enforcement has excluded and will continue to exclude a significantly higher proportion of qualified female applicants from consideration for permanent appointments than it does qualified male applicants.

32. The salaries for positions classified Head Administrative Assistant and Administrative Assistant are in excess of \$10,000 per year.

33. For the past twelve years, the plaintiff has been a career civil servant in the employ of the Commonwealth. On March 28, 1975, she was laid off from a permanent position in the Classified Civil Service of the Commonwealth as State Federal Funds and Personnel Coordinator in the Civil Defense Agency of the Commonwealth. At the time she was laid off, she had held that permanent position for approximately eight years. The Veterans' Preference Statute grants to disabled veterans a preference when employees are laid off by requiring that disabled veterans be laid off after all other employees.

34. The plaintiff has in the past been denied job opportunities by the Veterans' Preference Statute, the rules and regulations of the Division implementing said Statute and their enforcement by the defendants. She has been excluded from consideration, and has been delayed in being reached for consideration, for many positions for which she has applied in the Classified Civil Service of the Commonwealth because male veterans with lower scores were ranked ahead of her on eligible lists.

35. The plaintiff is at the present time unemployed. She desires to continue to be a career civil servant in the employ of

the Commonwealth by obtaining a permanent position as a Head Administrative Assistant or an Administrative Assistant.

36. The Veterans' Preference Statute and the rules and regulations of the Division implementing said Statute and their enforcement by the defendants have deprived and continue to deprive the plaintiff of the equal protection of the laws and of due process of law in violation of the Fourteenth Amendment to the United States Constitution in that they unlawfully discriminate in public employment on the basis of sex by systematically excluding qualified and eligible female applicants, including the plaintiff, from the group of eligible persons from which appointing authorities are required to make selections for appointment to permanent positions in the Classified Civil Service of the Commonwealth.

37. Unless restrained by this Court, the defendants will use the Administrative Assistant Eligible List to fill the seven permanent positions classified as Administrative Assistant for which there were requisitions as of April 23, 1975, and any additional permanent positions classified as Administrative Assistant for which requisitions are issued.

38. The Head Administrative Assistant Eligible List will expire on August 24, 1975. The appointing authority has thus far not appointed any of the three persons who were certified and whose names appear highest on that list. Unless restrained by this Court, the appointing authority will make such appointment or the defendants will permit the Head Administrative Assistant Eligible List to expire before the plaintiff can be considered for appointment to the one available position as Head Administrative Assistant.

39. The use for positions classified as Head Administrative Assistant and Administrative Assistant of eligible lists established in accordance with the Veterans' Preference Statute and the rules and regulations of the Division implementing said Statute is causing irreparable harm to the plaintiff for which she has no plain and adequate remedy at law.

COUNT II

40. The plaintiff reasserts the averments of Paragraphs 1 through 39, inclusive, of this Complaint with the same force and effect as if herein set forth and repeated in full.

41. For many years the Commonwealth has excluded females from, or discriminated against females in filling, various positions in public employment. As a result, females continue to be underrepresented in the positions in the Classified Civil Service of the Commonwealth which are most desirable in terms of salary, responsibility and opportunity for advancement, including positions classified Head Administrative Assistant and Administrative Assistant.

42. Because of the Commonwealth's history of discrimination against females in public employment, the defendants are under an affirmative constitutional duty to the plaintiff to eliminate every law, rule and regulation that has the effect of operating in practice to perpetuate the discrimination against qualified female applicants in public employment, including the Veterans' Preference Statute and the rules and regulations of the Division implementing said Statute.

COUNT III

43. The plaintiff reasserts the averments of Paragraphs 1 through 39, inclusive, of this Complaint with the same force and effect as if herein set forth and repeated in full.

44. The United States of America has adopted various laws, regulations and practices expressly excluding females from the armed forces and expressly limiting opportunities for females in the armed forces with the effect that females have been and continue to be discouraged by federal law from joining or attempting to join the armed forces of the United States. Such

laws and regulations include laws and regulations limiting the percentage of positions in the armed forces open to females, laws and regulations establishing stricter qualifications for females than for males seeking to join the armed forces, laws and regulations discriminating against females as to benefits, positions and promotions available to members of the armed forces, and laws and regulations excluding females from the service academies. Said laws and regulations have created an environment which has discouraged and discourages females generally from joining the armed forces of the United States.

45. The Veterans' Preference Statute and the rules and regulations of the defendant Division implementing said Statute and their enforcement by the individual defendants deprive plaintiff of the equal protection of the laws and of due process in violation of the Fourteenth Amendment to the United States Constitution in that they unlawfully discriminate in public employment on the basis of sex by the adoption of a qualification for public employment which incorporates and perpetuates the sex discrimination expressly established by law and regulation in the armed forces of the United States.

WHEREFORE, the plaintiff prays:

A. That a three-judge Court be convened pursuant to 28 U.S.C. §§ 2281 and 2284 to hear and determine this action upon at least five days' notice of hearing to the Governor and Attorney General of the Commonwealth.

B. That the Court enter a preliminary injunction enjoining the defendants, their officers, agents, servants, employees, and attorneys from filling any permanent position in the Classified Civil Service of the Commonwealth classified as Administrative Assistant until this action can be heard and decided on the merits.

C. That the Court enter a preliminary injunction enjoining the defendants, their officers, agents, servants, employees,

and attorneys from filling the permanent position of Head Administrative Assistant at the Solomon Mental Health Center in the Department of Mental Health of the Commonwealth until this action can be heard and decided on the merits.

D. That the Court enter a preliminary injunction enjoining the defendants, their officers, agents, servants, employees, and attorneys from permitting the eligible list for the position of Head Administrative Assistant at the Solomon Mental Health Center in the Department of Mental Health of the Commonwealth to expire before this action can be heard and decided on the merits.

E. That the Court enter a permanent injunction enjoining the defendants, their officers, agents, servants, employees, and attorneys from granting any preference to veterans or disabled veterans in filling positions in the Classified Civil Service of the Commonwealth classified as Head Administrative Assistant or Administrative Assistant.

F. That the Court enter a permanent mandatory injunction ordering the defendant Director to reestablish the Head Administrative Assistant Eligible List and the Administrative Assistant Eligible List by ranking the eligible persons thereon solely in the order of their scores without reference to any preference accorded to any person by Mass. G.L. c. 31, §§ 21-25.

G. That the Court enter a permanent mandatory injunction ordering the defendants, their officers, agents, servants, employees, and attorneys to consider for appointment to the permanent position of Head Administrative Assistant at the Solomon Mental Health Center in the Department of Mental Health of the Commonwealth the three highest ranking available eligible persons on the Head Administrative Assistant Eligible List.

H. That the Court enter a permanent injunction ordering the defendants, their officers, agents, servants, employees,

and attorneys to undertake such affirmative action to hire qualified female applicants for permanent positions as Administrative Assistants as to the Court may seem meet and just upon the evidence to eradicate the present effects of past sex discrimination in filling such positions.

I. That the Court enter a permanent injunction enjoining the defendants, their officers, agents, servants, employees, and attorneys from applying the Veterans Preference Statute, Mass. G.L. c. 31, §§ 21-25, to eligible lists for permanent positions in the Classified Civil Service of the Commonwealth where its effect is to grant to male veterans a preference over female non-veterans in the ranking on such eligible lists.

J. That the Court enter a declaratory judgment that the Veterans' Preference Statute, Mass. G.L. c. 31, §§ 21-25, is unconstitutional as applied to positions in the Classified Civil Service of the Commonwealth classified as Head Administrative Assistant or Administrative Assistant.

K. That the Court enter a declaratory judgment that the Veterans' Preference Statute, Mass. G.L. c. 31, §§ 21-25, is unconstitutional.

L. That the Court grant to the plaintiff her costs and expenses of litigation.

M. That the Court grant to the plaintiff such further and other related relief as to the Court may seem meet and just.

By her attorneys,

RICHARD P. WARD
JOHN SILAS HOPKINS, III
STEPHEN B. PERLMAN
ELEANOR D. ACHESON

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May 20, 1975

ATTACHMENT A.
CERTIFICATION OF OTHER ELIGIBLES

Rule 14.

1. Certification shall be made in the order of the standing on the eligible list, except as provided in Section 4 of this rule, as follows: —

For 1 vacancy,	3 names	For 4 vacancies,	6 names
2 vacancies,	4 names	5 vacancies,	7 names
3 vacancies,	5 names		

For each multiple of five vacancies, the same multiple of seven names; for vacancies from one to four, inclusive, over a multiple of five, additional names according to the above table.

Eligible List," has been deleted from the Complaint and has been reproduced as Exhibit 2 to the Agreed Statement of Facts at page 104 of the Appendix.]

[Attachment C, entitled "Administrative Assistant Eligible List," has been deleted from the Complaint and has been reproduced as Exhibit 6 to the Agreed Statement of Facts at page 113 of the Appendix.]

**United States District Court
for the District of Massachusetts.**

No. 74-5061-T.

[Title omitted in printing.]

**Plaintiffs' Motion to Consolidate for Trial this Action with
Feeney v. The Commonwealth of Massachusetts, et al.,
Civil Action No. 75-1991-T.**

The plaintiffs move pursuant to Fed. R. Civ. P. 42(a) to consolidate *Feeney v. The Commonwealth of Massachusetts, et al.*, Civil Action No. 75-1991-T, with this action for trial on the following grounds:

1. The actions involve common questions of law concerning the constitutionality of the Massachusetts Veterans' Preference Statute. The actions involve a substantial number of common issues of fact.

2. Consolidation of these actions would save substantial time of the Court and the parties and would not prejudice any party.

By their attorneys,
RICHARD P. WARD
JOHN SILAS HOPKINS, III
STEPHEN B. PERLMAN
ELEANOR D. ACHESON
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225 Franklin Street
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617-423-6100

May 21, 1975

United States District Court for the District of Massachusetts.

No. 75-1991-T.

[Title omitted in printing.]

Plaintiff's Application for a Temporary Restraining Order.

The plaintiff moves pursuant to 28 U.S.C. § 2284(3) that the Court enter a temporary restraining order:

A. Finding on the basis of paragraphs 16, 22, 33, 35, 37 and 38 of the Complaint, which is verified under oath by the plaintiff, that the plaintiff will, unless the defendants are temporarily restrained, suffer irreparable damage in that

(1) On March 28, 1975, the plaintiff was laid off from a permanent position in the Classified Civil Service of the Commonwealth of Massachusetts;

(2) The plaintiff is at present unemployed and desires to continue a twelve-year career in the public service of the Commonwealth;

(3) But for the operation of the Massachusetts Veterans' Preference Statute, Mass. G.L. c. 31, §§ 21-25, the plaintiff would rank third (rather than fourteenth) on an August 24, 1973 eligible list for a permanent position as head administrative assistant at the Solomon Mental Health Center in the Department of Mental Health of the Commonwealth and seventeenth (rather than seventieth) on an April, 1975 eligible list for permanent positions as administrative assistant in the Classified Civil Service of the Commonwealth; and

(4) Unless restrained the defendants will begin using the two foregoing eligible lists to make appointments to permanent positions or will permit the eligible list for head administrative assistant to expire thereby impairing the plaintiff's opportunity to be considered for a job;

and

B. Ordering that the defendants, their officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with them, be temporarily restrained, until hearing and determination of this action by a three-judge court pursuant to 28 U.S.C. §§ 2281 and 2284, from any of the following actions:

(1) Making any appointment to any permanent position in the Classified Civil Service of the Commonwealth of Massachusetts from the April, 1975 eligible list for positions classified as administrative assistant, provided that this restraining order shall not prevent making appointments to temporary positions classified as administrative assistant from said list and provided further that any position classified as administrative assistant may be filled (or its present holder continued) on a provisional basis;

(2) Making any appointment to the permanent position of head administrative assistant at the Solomon Mental Health Center in the Department of Mental Health of the Commonwealth of Massachusetts, provided that said position may be filled (or its present holder continued) on a provisional basis; or

(3) Permitting the August 24, 1973 eligible list for the position of head administrative assistant at the Solomon

Mental Health Center in the Department of Mental Health of the Commonwealth of Massachusetts to expire.

By her attorneys,

RICHARD P. WARD
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May 22, 1975

United States District Court for the District of Massachusetts.

No. 75-1991-T.

[Title omitted in printing.]

Temporary Restraining Order.

This action came on for hearing on the plaintiff's application for a temporary restraining order before the Court, Honorable Joseph L. Tauro, District Judge, presiding, and after hearing the Court finds on the basis of paragraphs 16, 22, 33, 35, 37 and 38 of the Complaint, which is verified under oath by the plaintiff, that the plaintiff will, unless the defendants are temporarily restrained, suffer irreparable damage in that

(1) On March 28, 1975, the plaintiff was laid off from a permanent position in the Classified Civil Service of the Commonwealth of Massachusetts;

(2) The plaintiff is at present unemployed and desires to continue a twelve-year career in the public service of the Commonwealth;

(3) But for the operation of the Massachusetts Veterans' Preference Statute, Mass. G.L. c. 31, §§ 21-25, the plaintiff would rank third (rather than fourteenth) on an August 24, 1973 eligible list for a permanent position as head administrative assistant at the Solomon Mental Health Center in the Department of Mental Health of the Commonwealth and seventeenth (rather than seventieth) on an April, 1975 eligible list for

permanent positions as administrative assistant in the Classified Civil Service of the Commonwealth; and

(4) Unless restrained the defendants will begin using the two foregoing eligible lists to make appointments to permanent positions or will permit the eligible list for head administrative assistant to expire thereby impairing the plaintiff's opportunity to be considered for a job.

It is therefore ORDERED:

A. That the defendants, their officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with them, be temporarily restrained, until hearing and determination of this action by a three-judge court pursuant to 28 U.S.C. §§ 2281 and 2284, from either of the following actions:

(1) Making or approving any appointment to any permanent position in the Classified Civil Service of the Commonwealth of Massachusetts from the April, 1975 eligible list for positions classified as administrative assistant, provided that this restraining order shall not prevent making appointments to temporary positions classified as administrative assistant from said list and provided further that any position classified as administrative assistant may be filled (or its present holder continued) on a provisional basis; or

(2) Making or approving any appointment to the permanent position of head administrative assistant at the Solomon Mental Health Center in the Department of Mental Health of the Commonwealth of Massachusetts, provided that said position may be filled (or its present holder continued) on a provisional basis.

B. That expiration of the August 24, 1973 eligible list for the position of head administrative assistant at the Solomon Mental Health Center in the Department of Mental Health of the Commonwealth of Massachusetts be extended by the defendants until further order of this Court.

Dated at Boston, Massachusetts this 23d of May, 1975.

JOSEPH L. TAURO,
United States District Judge.

**United States District Court
for the District of Massachusetts.**

Nos. 74-5061-T, 75-1991-T.

[Titles omitted in printing.]

Defendants' Motion to Dismiss.

Now come the defendants in the above-entitled consolidated actions and move as follows:

The Anthony Case

1. That the Court dismiss *Anthony et al. v. Commonwealth et al.* for want of subject matter jurisdiction, there being no case or controversy as is required by U.S. Const., Art. III, because the enactment by the General Court of c. 134, Acts of 1975 has rendered this action moot.

The Feeney Case

2. That the Court dismiss *Feeney v. Commonwealth et al.* in its entirety for failure to state a claim upon which relief can be granted, there being no allegations to support a claim of unlawful discrimination.

3. That the Court dismiss *Feeney v. Commonwealth et al.* as to the Commonwealth of Massachusetts for want of subject matter jurisdiction, the Commonwealth never having consented to suit, as is required by U.S. Const., Amend. XI.

The defendants further move that argument on the above grounds for dismissal be heard concurrently with the argument on the merits in the above-entitled consolidated actions

according to the schedule arranged by the parties and ordered by this Court on May 23, 1975.

By their Attorney,
ALAN K. POSNER
Assistant Attorney General

[Certificate of Service omitted in printing.]

**United States District Court
for the District of Massachusetts.**

No. 75-1991-T.

[Title omitted in printing.]

Order.

Pursuant to the authority and command of 28 U.S.C. § 2284, I hereby designate and assign the Honorable Levin H. Campbell, United States Court of Appeals for the First Circuit, and the Honorable Frank J. Murray, United States District Judge for the District of Massachusetts to sit with the Honorable Joseph L. Tauro, United States District Judge for the District of Massachusetts in the above-entitled cause, a three-judge district court being required by 28 U.S.C. § 2281.

FRANK M. COFFIN,
Chief Judge,
U.S. Court of Appeals for the First Circuit.

Dated: June 6, 1975

**United States District Court
for the District of Massachusetts.**

No. 75-1991-T.

[Title omitted in printing.]

Agreed Statement of Facts.

For purposes of this case only, the parties to the above-entitled case stipulate and agree as follows:

1. The Plaintiff, Helen B. Feeney, is a female, residing in the Commonwealth of Massachusetts (Commonwealth).

2. The Defendant Division of Civil Service (Division) is an executive and administrative department of the Commonwealth created under the provisions of Mass. G.L. c. 13, § 2, and by that same statute placed under the supervision and control of the Director of Civil Service (Director) and the Civil Service Commission (Commission). Said Division is charged with administering and enforcing the provisions of the Massachusetts Civil Service Law, Mass. G.L. c. 31.

3. The Defendant Edward W. Powers was the Director from August 14, 1973 through June 30, 1975 and as such was an officer of the Commonwealth and administrative and executive head of the Division.

4. The Defendants Nancy B. Beecher, Wayne A. Budd, Richard Linden, Richard J. Healy and John Donegan are members of the Commission, and together they comprise the Commission.

5. The Division, the Director and the Commission are charged by the law of the Commonwealth with the administration and enforcement of the Massachusetts Civil Service Law which sets forth the requirements and procedures to be

followed in filling vacancies in positions in the employ of the Commonwealth which positions are known as the Classified Civil Service. As part of these general duties, these Defendants are charged with enforcement of the Veterans' Preference Statute (Mass. G.L. c. 31, §§ 21-25) which is a part of the Massachusetts Civil Service Law. Approximately 60 percent of all positions in the employ of the Commonwealth are subject to the Massachusetts Civil Service Law. The remaining 40 percent of positions are exempt from the Massachusetts Civil Service Law.

6. The Classified Civil Service is divided into two Divisions known as the Classified Official Service and as the Classified Labor Service. All positions referred to herein are positions in the Classified Official Service. Approximately 90,000 employees of the Commonwealth and its municipalities are presently employed in positions in the Classified Official Service subject to the Massachusetts Civil Service Law. Over 100,000 appointments and promotions to positions in the Classified Official Service was made from Eligible Lists established by the Director in the ten year period from July 1, 1964 through June 30, 1974. In the fiscal year of the Commonwealth ended June 30, 1974, over 11,000 appointments (not including promotions) were made to positions in the Classified Official Service from Eligible Lists established by the Director.

7. Applicants for permanent positions governed by the Massachusetts Civil Service Law and the Civil Service Rules are required to take a competitive examination that is designed to separate qualified applicants from unqualified applicants and to measure the applicants' relative ability and fitness to perform the duties of the position for which the examination is given. Applicants who pass the examination are referred to as "eligibles" and are placed on an "Eligible List". An "unassembled" competitive examination is one on which the relative

grades of applicants are determined on the sole basis of the training and experience of the applicants. On all other competitive examinations the relative grades are determined by a formula which gives weight both to the results of a written examination and to the training and experience of the applicants. On either type of examination applicants receive appropriate credit for relevant experience acquired in the military service of the United States.

8. The Veterans' Preference Statute requires each Eligible List to be established by ranking "eligibles" in the following order: (1) disabled veterans in order of their respective grades on the examination; (2) veterans in order of their respective grades on the examination; (3) widows of veterans and widowed mothers of veterans in order of their respective grades on the examination; and (4) all other eligibles in order of their respective grades on the examination. These four classifications are hereinafter referred to as "Preference Categories".

9. Pursuant to Mass. G.L. c. 31 and regulations issued thereunder, each appointing authority of the Commonwealth complies with the following procedures in filling vacancies for permanent positions governed by the Massachusetts Civil Service Law. The appointing authority sends a requisition to the Director stating the number of positions to be filled. The Director then certifies eligibles to the appointing authority in the order of rank on the Eligible List. One of two procedures is followed in certification and appointment of eligibles. Under one procedure (hereinafter referred to as "Certification Procedure One"), the Director certifies the number of eligibles which bears the following relationship to the number of vacancies stated on the requisition:

<u>No. of Vacancies</u>	<u>No. Certified</u>
1	2 or 3
2	4
3	5
4	6
5	7

(Thereafter, seven names are certified for each multiple of five vacancies; for vacancies from one to four, inclusive, over a multiple of five, additional names according to the above table.)

The appointing authority is required to make any appointment from among those certified. Certification Procedure One was followed with respect to the Solomon Head Administrative Assistant Eligible List referred to in paragraph 12 hereof. Under the other procedure (hereinafter referred to as "Certification Procedure Two"), for the position or positions requisitioned by each appointing authority, the Director sends out Notices of Interview to a number of the highest ranking eligibles which is larger than that specified by the table above. Only eligibles who report for an interview and agree to accept the position or positions are considered to be interested therein. The appointing authority is required to make any appointment from the number of the highest ranking interested eligibles that is determined by the table above (*e.g.*, for two vacancies the appointing authority must appoint two of the four highest ranking eligibles who are considered to be interested in the position). Certification Procedure Two was being followed with respect to the Administrative Assistant Eligible List referred to in paragraph 16 hereof until the entry of the restraining order in this action on May 23, 1975. Certification

Procedure Two would have been followed with respect to the Counsel I Eligible List referred to in paragraph 18 hereof but for the entry of the restraining order in *Anthony, et al. v. Commonwealth, et al.*, Civil Action No. 74-5061-T (November 4, 1974, D. Mass.). An Eligible List remains in effect for a maximum of two years after it is established but expires in less than two years if and when there remains no eligible thereon available for appointment. In some cases, a new examination is given for a position during the two year effective period of the Eligible List for that position even though eligibles remain thereon who are available for appointment. When this occurs, a new Eligible List is established, and the remaining eligibles on the prior list are integrated into the new list in order of grade within each Preference Category. While an Eligible List is in effect, all certifications to appointing authorities and all appointments to the position or positions for which the examination has been given must be made from the Eligible List. Under either Certification Procedure One or Certification Procedure Two, those eligibles determined by the table above from which an appointing authority must make any appointment to a permanent position are referred to as the "eligibles certified for appointment". In all cases, all eligibles who are tied at a particular grade within a Preference Category have equal eligibility to be included among the eligibles certified for appointment (*e.g.*, under Certification Procedure One, if there were two positions and eligibles in the highest Preference Category with scores of 94, 94, 92, 90, 90, 88 and 84, five, rather than four, eligibles would be certified for appointment).

10. In January, 1973, Mrs. Feeney made an application for the competitive examination for appointment to one permanent position classified by the Division as Head Administrative Assistant (Dr. Harry C. Solomon Mental Health Center) (hereinafter referred to as "Solomon Head Administrative Assist-

ant"). A copy of the Notice of Examination is attached hereto as Exhibit 1. The weekly salary rate for this position, a grade 17, ranges from \$237.95 to \$300.05.

11. On February 24, 1973, a competitive examination for Solomon Head Administrative Assistant was held. Mrs. Feeney received a grade of 92.32, which was the third highest grade on the examination.

12. On August 24, 1973, in accordance with the procedures described in paragraphs 7, 8 and 9 hereof, the Director established an Eligible List for Solomon Head Administrative Assistant, a copy of which is attached hereto as Exhibit 2. The copy of the Eligible List attached as Exhibit 2 and all other Eligible Lists attached as exhibits are true copies of official records of the Division, and the data contained thereon may be taken to be what it purports to be (*e.g.*, the designation of those eligibles who were granted veteran status for purposes of the preference provided by the Veterans' Preference Statute). On each Eligible List attached hereto as an exhibit, a handwritten notation of the sex of each eligible has been added by the parties for the purpose of this action although such handwritten notation is not part of the official record of the Division. Attached hereto as Exhibit 3 is a list of the veterans appearing on Exhibit 2 setting forth for each veteran the date of discharge from military service and the branch of military service to the extent ascertainable from records of the Division.

13. On October 3, 1973, the Director certified eligibles for appointment to the appointing authority for the permanent position of Solomon Head Administrative Assistant, a copy of the certification is attached hereto as Exhibit 4. No appointment has yet been made to this position.

14. In February, 1974, Mrs. Feeney made an application for the competitive examination for permanent appointment to positions classified by the Division as Administrative Assist-

ant. Attached hereto as Exhibit 5 is a copy of the Notice of Examination for these positions.

15. On May 18, 1974, a competitive examination for Administrative Assistant was held. Mrs. Feeney received a grade of 87. Sixteen applicants received higher grades. Five other applicants received the same grade.

16. In April, 1975, in accordance with the procedures described in paragraphs 7, 8 and 9 hereof, the Director established an Eligible List for Administrative Assistant (the Administrative Assistant Eligible List), a copy of which is attached hereto as Exhibit 6. Attached hereto as Exhibit 7 is a revised copy of the Administrative Assistant Eligible List which reflects some adjustments in rank for veterans who were found, prior to May 13, 1975, to be eligible for status as disabled veterans. Attached hereto as Exhibit 8 is a list of the veterans appearing on Exhibit 7 setting forth for each veteran the date of discharge from the military service and the branch of the military service to the extent ascertainable from records of the Division.

17. As of May 13, 1975, there were requisitions from five appointing authorities for a total of seven permanent positions classified as Administrative Assistant to be filled from the Administrative Assistant Eligible List. On May 13, 1975, the Director sent out Notices of Interview for Administrative Assistant in the manner described as Certification Procedure Two in paragraph 9 hereof. As a result of the restraining order entered in this action on May 23, 1975, no appointments to permanent positions classified as Administrative Assistant have been made. There are presently 43 provisional appointees to permanent positions classified as Administrative Assistant. If these positions are filled on a permanent basis over the two year effective period of the Administrative Assistant Eligible List, these positions will be filled from eligibles

certified for appointment from the Administrative Assistant Eligible List.

18. Attached hereto as Exhibit 9 is an Eligible List for positions classified as Counsel I which was established by the Director on October 25, 1974, in accordance with the procedures described in paragraphs 7, 8 and 9 hereof. Attached hereto as Exhibit 10 is a list of the veterans appearing on Exhibit 9 setting forth for each veteran the date of discharge from the military service and the branch of the military service to the extent ascertainable from records of the Division. The unassembled competitive examination for Counsel I is an open and continuous examination, *i.e.*, new applications are continuously accepted and processed, and from time to time applicants are graded and those receiving passing grades are integrated into the Eligible List in order of respective grades within each of the Preference Categories referred to in paragraph 8 hereof. Attached hereto as Exhibit 11 is an additional list of persons who have passed the unassembled examination for Counsel I and have been integrated into the Counsel I Eligible List in the manner described in this paragraph. Kathryn Noonan, a female non-veteran, should also be on the Counsel I Eligible List with a grade of 94. As of November 6, 1974, there were requisitions from thirteen appointing authorities for a total of nineteen permanent positions classified as Counsel I to be filled from the Counsel I Eligible List.

19. Of the veterans who took the Administrative Assistant examination given on May 18, 1974, approximately 84 of 147, or 57 percent, were not put on the Eligible List. Of those 84 veterans declared ineligible, 46 failed the written test and 38 failed to qualify for other reasons. Of the persons who were not put on the Administrative Assistant Eligible List after taking the applicable examination, approximately 84 of 301, or 28 percent, were veterans. Of the 301 persons declared ineligible, approximately 166 failed the written test, 132 failed to

qualify for other reasons and 3 cannot be accounted for. Of the veterans who took the Head Administrative Assistant examination given on February 24, 1973, 7 of 16, or 44 percent, were not put on the eligible list. Of those 7 veterans declared ineligible, 4 failed the written test and 3 failed to qualify for other reasons. Of the persons who were not put on the Eligible List for Head Administrative Assistant after taking the applicable examination, approximately 7 of 16, or 44 percent, were veterans. Of the 16 persons declared ineligible, 11 failed the written test and 5 failed to qualify for other reasons.

20. During the period from July 1, 1963 through June 30, 1973, 47,005 appointments (not including promotions) to permanent positions in the Classified Official Service were made by appointing authorities of the Commonwealth and its municipalities. Forty-three percent, or 20,211, of these appointments were females (of whom 374, or 1.8 percent, were veterans). Fifty-seven percent, or 26,794, of these appointments were males (of whom 14,476, or 54 percent, were veterans). Attached hereto as Exhibit 12 is a table setting forth for the fiscal years of the Commonwealth from 1964 through 1973 inclusive the numbers of persons appointed to permanent positions in the Classified Official Service, and a breakdown by sex of the number who were disabled veterans, veterans, "Gold Star" widows and widowed mothers of veterans and non-veterans for the purpose of application of the Veterans' Preference Statute. For many positions there has not been competition between male and female applicants. A large percentage of the female appointees in permanent positions are in the lower grade and lower paying positions, such as clerical positions, for which males have traditionally not applied. Some of the female appointees were appointed as a result of the practice by some appointing authorities of requisitioning specifically for a female eligible (a practice which is no longer permitted and was discontinued about 1971 when

the Massachusetts Civil Service Law, which had expressly permitted such practice, was amended). Some of the female eligibles were appointed from lists which did not include many veterans. Some female eligibles were appointed from lists on which they were not included in the initial certifications because of veterans' preference but were reached for certification later during the two year effective period of the list as additional jobs were requisitioned from the same list. A greater proportion of the male appointees than female appointees in permanent positions are in the higher grade and higher paying positions. For many permanent positions for which males and females have competed, the application of the Veterans' Preference Statute has resulted in a substantially greater proportion of female eligibles than male eligibles not being certified to appointing authorities for appointment to permanent positions. Attached hereto as Exhibits 13 through 62 are fifty examples of eligible lists on which female eligibles are ranked below male veterans with lower grades and from which lists eligibles, who were not certified for appointment, would have been certified if rankings on the eligible lists had been made solely on the basis of grades on the competitive examinations. These examples are not intended to be exhaustive and the parties have not determined how many such examples there are. There have been many thousands of eligible lists established during the past ten years. Attached hereto as Exhibit 63 is the Annual Report to the Great and General Court of the Commonwealth and the Governor from the Massachusetts Civil Service Commission and the Director of Civil Service for the fiscal year ended June 30, 1974.

21. Attached hereto as Exhibits 64 through 79 are true copies of some notices of civil service examinations, principally for Counsel positions and Administrative Assistant positions, published by the Director pursuant to which examinations

were held, eligible lists were established and certifications for appointment to permanent positions were made.

22. Alfonso M. D'Apuzzo, a male, was originally examined on January 14, 1961, for the position of Assistant Attorney, Labor Relations Committee, Department of Labor Industries. His examination was given and an Eligible List established pursuant to Exhibit 71. He received the appointment to the job described above and has since been promoted to the position of Executive Secretary, State Labor Relations Commission.

23. Robert F. Troy, a male, was originally examined on January 28, 1961, for the position of General Counsel, Division of Administration, Department of Public Health. His examination was given and an Eligible List established pursuant to Exhibit 70. He received the appointment to the position described above and has since been promoted to the position of Chief Attorney of the Division of Administration, Department of Public Health.

24. Joseph A. O'Neill, a male, was originally examined on September 23, 1961 for the temporary position of Administrative Assistant, Division of Local Health Services, Department of Public Health. His examination was given and an Eligible List established pursuant to Exhibit 68. He received the appointment to the position described above and was subsequently appointed permanently from the same Eligible List, a copy of which is attached hereto as Exhibit 80.

25. Margaret M. Higgins, a female, has been an employee of the Commonwealth at the State Labor Relations Commission since October 27, 1937. She is presently employed in the position classified as Hearing Stenographer, a grade 13 position. The weekly salary range for Hearing Stenographer, grade 13, is \$185.05 to \$226.45. Margaret M. Higgins took the examination for the permanent position classified as Labor Relations Examiner held on December 10, 1966, and her name

was placed on the Eligible List established by the Director on June 12, 1967, a copy of which is attached hereto as Exhibit 81. The last three appointments to the permanent positions of Labor Relations Examiner were made from Exhibit 81. Ms. Higgins was not certified for appointment. The present weekly salary range for the permanent position of Labor Relations Examiner is \$250.95 to \$318.15.

26. In addition to Counsel I, there are three additional Counsel categories in the Commonwealth designated as Counsel II, Counsel III and Counsel IV. Counsel III and Counsel IV positions are generally filled by promotion from within the service; Counsel I and Counsel II are both entry level positions. As of March 7, 1975, 20 Counsel positions were filled by permanent employees as follows:

Counsel	I	1
Counsel	II	10
Counsel	III	7
Counsel	IV	2

Of the 20 Counsel positions filled by permanent employees all 20 are filled by males, of whom 17 are veterans. No non-veteran holds a permanent appointment to a Counsel I position. All 20 of the Counsel positions filled by permanent employees were filled pursuant to the Massachusetts Civil Service Law including the Veterans' Preference Statute.

27. Mrs. Feeney took the examination held on February 6, 1971 for one permanent position classified as Assistant Secretary, Board of Dental Examiners. She received the second highest grade of 86.68. She was ranked sixth on the Eligible List behind five male veterans of whom four received lower grades. Mrs. Feeney was not certified for appointment. A male veteran with a grade of 78.08 was certified and ap-

pointed. A copy of the Eligible List for Assistant Secretary, established in accordance with the procedures described in paragraphs 7, 8 and 9 hereof, is attached hereto as Exhibit 61.

28. Mrs. Feeney is not a veteran. She has never applied for admission to any branch of the armed services of the United States.

29. If the plaintiff, Helen B. Feeney, were present in Court, she would testify under oath as set forth in her affidavit attached hereto as Exhibit 82.

30. If Edward W. Powers were present in Court, he would testify under oath as set forth in his affidavit attached hereto as Exhibit 83.

31. There are approximately 868,000 veterans who reside in the Commonwealth of whom approximately 16,000 are female. As of 1970 there were approximately 2,719,000 males in the Commonwealth of whom approximately 1,823,00 were over 18 years of age. As of 1970 there were approximately 2,970,000 females in the Commonwealth of whom approximately 1,990,000 were over the age of 18.

32. During the past ten years, approximately 56 percent of all male applicants who passed civil service examinations for positions in the Classified Official Service were disabled veterans or veterans who received the preference for disabled veterans and veterans provided by the Veterans' Preference Statute. During the past ten years, approximately 1.5 percent of the female applicants who passed civil service examinations for positions in the Classified Official Service were disabled veterans or veterans who received the preference for disabled veterans and veterans provided by the Veterans' Preference Statute. Attached hereto as Exhibit 84 is a table setting forth for the fiscal years of the Commonwealth from 1964 through 1973 inclusive the numbers of persons passing civil service examinations for positions in the Classified Official Service and a breakdown by sex of the number who were disabled veterans,

veterans, "Gold Star" widows and widowed mothers of veterans and non-veterans for the purpose of application of the Veterans' Preference Statute.

33. As of December 10, 1974, there were a total of approximately 15,589 members of the Bar of the Commonwealth of whom 979 were female.

34. Listed below for each year 1970-1974 are the total number of persons admitted to the bar in that year and the number of females included in that total.

<u>Year</u>	<u>Total No. of Persons</u>	
	<u>Admitted to Bar</u>	<u>Females Admitted to Bar</u>
1970	682	48
1971	814	75
1972	959	98
1973	1,134	124
1974	1,320	167

35. No woman other than a nurse was admitted into any branch of the armed services of the United States until August 12, 1918, when approximately 10,000 women were enlisted into the Navy and Marine Corps as "Yeomanettes" and "Marinettes". The Army determined that it was legally disabled from enlisting women at this time. These organizations were disbanded on July 30, 1919. No women other than nurses were enlisted in the armed services after that date until 1942 when the Women's Army Auxiliary Corps (WAAC) and the Navy WAVES were created on May 14, 1942, and July 30, 1942, respectively. On February 13, 1943, the Women's Marine Corps was created, and on July 1, 1943, the Women's Army Corps was created.

36. Women have never been permitted admission to the United States Military Academy at West Point, the United

States Naval Academy, or the United States Air Force Academy. Admission to these institutions has been and is restricted to men.

37. No woman has ever been drafted into service with any of the armed services. Draftees have been limited to males.

38. At all times relevant to these proceedings until within the past five years, the armed services prohibited the enlistment and appointment of married women, women with children less than 18 years of age, and women between the ages of 18 and 21 who did not have parental consent. Similarly situated men were not so limited.

39. The military occupational classifications (MOS) system is designed to identify, classify, and relate skills and personality characteristics to military job requirements. According to a Yale Law Journal Note, "The Equal Rights Amendment and the Military," 82 Yale L.J. 1533, as of July, 1972, medical and dental specialties and administrative personnel accounted for the occupational specialties of 94.6 percent of the enlisted women in the Army. Similarly, women were excluded as of July, 1972 from more than half of the Army officer MOS. The total number of officer MOS in the Army in July, 1972 was 365. Of the 188 from which women were excluded, 81 were medical officer MOS, 35 were male command MOS, 49 involved railroad, marine, or aviation operations, and 23 others involved physical labor or assignment to a combat or hazardous duty area. As a result, 46 percent of the women serving as Army officers were in the field of administration and personnel, while another 14.3 percent were in positions commanding other women. One of the MOS from which women were excluded was Post Commander. Women commanded organized WAC units consisting of approximately 100 women. Groups of less than 50 women at a station were called WAC contingents and were administered and commanded by men.

40. Attached hereto as Exhibit 90 is a true copy of testimony before the Special Subcommittee on Utilization of Manpower in the Military, Committee on Armed Services, U.S. House of Representatives, at the hearing session of March 6, 1972.

41. Attached hereto as Exhibit 91 is a true copy of a publication entitled "Selected Manpower Statistics", issued by the United States Department of Defense on May 15, 1974. The facts set forth therein may be taken by the court to be true.

42. Attached hereto as Exhibit 92 are true copies of publications entitled "The View From Here" and published by the Office of the Director, Women's Army Corps, United States Army. The facts stated therein may be taken by the Court to be true and the opinions stated therein may be taken by the Court to be those of the Director of the Women's Army Corps.

43. Attached as Exhibit 92 is a true copy of a publication entitled "Utilization of Military Women", issued by the Department of Defense in December, 1972. The facts set forth therein may be taken by the Court to be true.

44. Attached hereto as Exhibit 94 are a group of charts setting forth data concerning the military services, which data may be taken by the Court to be true.

45. Attached hereto as Exhibit 95 are true copies of Fact Sheets setting forth facts concerning the United States Army, which information may be taken by the Court to be true.

46. Attached hereto as Exhibit 96 is a true copy of excerpts of AR 601-100, entitled "Appointment of Commissioned and Warrant Officers in the Regular Army", as currently in effect.

47. Attached hereto as Exhibit 97 is a true copy of excerpts of AR 601-100 as in effect until October 29, 1974.

48. Attached hereto as Exhibit 98 is a true copy of excerpts of AR 601-100 as in effect until November 15, 1971.

49. Attached hereto as Exhibit 99 is a true copy of excerpts of AR 135-100, entitled "Army National Guard and Army Re-

serve, Appointment of Commissioned and Warrant Officers of the Army", as currently in effect.

50. Attached hereto as Exhibit 100 is a true copy of excerpts of AR 601-210, entitled "Regular Army Enlistment Program", as currently in effect.

51. Attached hereto as Exhibit 101 is a true copy of excerpts of AR 601-210 as in effect until January 14, 1975.

52. Attached hereto as Exhibit 102 is a true copy of excerpts of AR 601-210 as in effect during 1973.

53. Attached hereto as Exhibit 103 is a true copy of excerpts of AR 601-210 as in effect until May 1, 1968.

54. Attached hereto as Exhibit 104 is a true copy of excerpts of AR 601-210 as in effect until September 16, 1964.

55. Attached hereto as Exhibit 105 is a true copy of excerpts of AR 601-280, entitled "Army Reenlistment Program", as currently in effect.

56. Attached hereto as Exhibit 106 is a true copy of excerpts of AR 601-280 as in effect until November 30, 1973.

57. Attached hereto as Exhibit 107 is a true copy of excerpts of AR 351-5, entitled "Army Officer Candidate Schools", as currently in effect.

58. Attached hereto as Exhibit 108 is a true copy of excerpts of AR 351-5 as in effect until January 23, 1975.

59. Attached hereto as Exhibit 109 is a true copy of excerpts of AR 351-5 as in effect until March 3, 1971.

60. Attached hereto as Exhibit 110 is a true copy of excerpts of AR 350-50, predecessor to AR 351-5, as in effect until January 31, 1969.

61. Attached hereto as Exhibit 111 is a true copy of excerpts of AR 611-201, entitled "Enlisted Career Management Fields and Military Occupational Specialties" as currently in effect.

62. Attached hereto as Exhibit 112 is a true copy of excerpts of AR 611-201 as in effect until October 1, 1973.

63. Attached hereto as Exhibit 113 is a true copy of excerpts of AR 611-201 as in effect until April 24, 1973.

64. Attached hereto as Exhibit 114 is a true copy of excerpts of AR 611-201 as in effect until October 26, 1972.

65. Attached hereto as Exhibit 115 is a true copy of excerpts of AR 611-201 as in effect until January 5, 1967.

66. Attached hereto as Exhibit 116 is a true copy of excerpts of AR 360-5, entitled "General Policies", as currently in effect.

67. Attached hereto as Exhibit 117 is a true copy of excerpts of AR 360-3, entitled "Women's Army Corps — General Provisions", as currently in effect.

68. Attached hereto as Exhibit 118 is a true copy of excerpts of AR 600-105, entitled "Army Aviation Officer Career Program", as currently in effect.

69. Attached hereto as Exhibit 119 is a true copy of excerpts of AR 600-20, entitled "Army Command Policy and Procedure", as currently in effect.

70. Attached hereto as Exhibit 120 is a true copy of excerpts of AR 614-30, entitled "Assignments, Details and Transfers, Oversea Service", as currently in effect.

71. Attached hereto as Exhibit 121 is a true copy of excerpts of AR 614-100, entitled "Assignments, Details and Transfers, Officers", as currently in effect.

72. Attached hereto as Exhibit 122 is a true copy of excerpts of AR 624-100, entitled "Promotion of Officers on Active Duty", as currently in effect.

73. Attached hereto as Exhibit 123 is a true copy of excerpts of AR 140-111, entitled "Army Reserve, Enlistment and Reenlistment", as currently in effect.

74. Attached hereto as Exhibit 124 is a true copy of excerpts of AR 135-178, entitled "Separation of Enlisted Personnel" as currently in effect.

75. Attached hereto as Exhibit 125 is a true copy of excerpts of AR 135-178 as in effect until December 30, 1969.

76. Attached hereto as Exhibit 126 is a true copy of excerpts of AR 135-178 as in effect until June 12, 1968.

77. Attached hereto as Exhibit 127 is a true copy of excerpts of AR 135-178 as in effect until January 20, 1966.

78. Attached hereto as Exhibit 128 is a true copy of excerpts of AR 635-130, entitled "Retirement of Officers, as in effect until August 8, 1960.

79. Attached hereto as Exhibit 129 is a true copy of excerpts of AR 635-130 as in effect until February, 1969.

80. Attached hereto as Exhibit 130 is a true copy of excerpts of AR 635-200, entitled "Personnel Separations, Enlisted Personnel", as currently in effect.

81. Attached hereto as Exhibit 131 is a true copy of excerpts of AR 635-200, which was in effect on or about October 13, 1971.

82. Attached hereto as Exhibit 132 is a true copy of excerpts of AR 635-200, as in effect on or about July 15, 1966.

83. Attached hereto as Exhibit 133 is a true copy of excerpts of AR 635-200 as in effect on or about June 21, 1972.

84. Attached hereto as Exhibit 134 is a true copy of excerpts of AR 635-200 as in effect on or about August 6, 1971.

85. Attached hereto as Exhibit 135 is a true copy of excerpts of AR 635-200 as in effect on or about April 16, 1971.

86. Attached hereto as Exhibit 136 is a true copy of excerpts of AR 635-200 as in effect on or about November 4, 1970.

87. Attached hereto as Exhibit 137 is a true copy of excerpts of AR 635-200 as in effect on or about April 25, 1969.

88. Attached hereto as Exhibit 138 is a true copy of excerpts of AR 635-200 as in effect on or about July 15, 1966.

89. Attached hereto as Exhibit 139 is a true copy of excerpts of AR 635-200 as in effect on or about August 6, 1974.

90. Attached hereto as Exhibit 140 is a true copy of excerpts of AR 635-200 as in effect on or about June 21, 1972.

91. Attached hereto as Exhibit 141 is a true copy of excerpts of AR 635-200 as in effect on or about August 6, 1974.

92. Attached hereto as Exhibit 142 is a true copy of excerpts of AR 635-200 as in effect on or about April 3, 1970.

93. Attached hereto as Exhibit 143 is a true copy of excerpts of AR 635-200 as in effect on or about May 21, 1969.

94. Attached hereto as Exhibit 144 is a true copy of excerpts of AR 635-120, entitled "Personnel Separations, Resignations and Discharges", as in effect on or about June 9, 1972.

95. Attached hereto as Exhibit 145 is a true copy of excerpts of AR 635-120 as in effect on or about April 8, 1969.

96. Attached hereto as Exhibit 146 is a true copy of excerpts of AR 635-120 as in effect on or about October 5, 1962.

97. Attached hereto as Exhibit 147 is a true copy of excerpts of AR 635-120 as in effect on or about May 21, 1962.

98. Attached hereto as Exhibit 148 is a true copy of excerpts of AR 635-120 as in effect on or about November 25, 1955.

99. Attached hereto as Exhibit 149 is a true copy of excerpts of AR 635-120 as in effect on or about April 16, 1971.

100. Attached hereto as Exhibit 150 is a true copy of excerpts of AR 635-120 as in effect on or about April 8, 1968.

101. Attached hereto as Exhibit 151 is a true copy of excerpts of AR 635-120 as in effect on or about May 21, 1962.

102. Attached hereto as Exhibit 152 is a true copy of excerpts of AR 635-120 as in effect on or about November 25, 1955 and until approximately May 21, 1962.

103. Attached hereto as Exhibit 153 are excerpts from the deposition of Lieutenant Colonel James W. Ward, United States Air Force, taken December 12, 1972 in the case of *Christina Callahan v. Melvin Laird*, Case No. CA 71-500-M, United States District Court for the District of Massachusetts. Colonel Ward's testimony may be taken by the Court to be true.

104. Attached hereto as Exhibit 154 is a true copy of a letter dated July 15, 1974 from Colonel Michael J. Barrett, Jr. to Mr. Jeffrey Axelrod. The statements therein may be taken by the Court to be true.

105. Attached hereto as Exhibit 155 is a true copy of excerpts of Air Force ("AF") Manual 33-3 entitled "Enlistment in the Regular Air Force" as in effect approximately between the dates April 15, 1970 and May 4, 1972.

106. Attached hereto as Exhibit 156 is a true copy of excerpts of Air Force Regulation ("AFR") No. 36-5 entitled "Appointment of Officers in the Regular Air Force" as in effect on or about July 10, 1969.

107. Attached hereto as Exhibit 157 is a true copy of excerpts of AFR 30-12(C3) entitled "Administrative Separation of Commissioned Officers and Warrant Officers and Warrant Officers of the Air Force" as in effect on or about May 1, 1970.

108. Attached hereto as Exhibit 158 is a true copy of excerpts of AF Manual 39-10 entitled "Separation Upon Expiration of Term of Service, for Convenience of Government, Minority, Dependency, and Hardship" as in effect on or about May 18, 1972.

109. Attached hereto as Exhibit 159 is a true copy of excerpts of Bureau of Naval Personnel Manual ("BUPERS"), No. 1070100 entitled "Dependency Status and Pregnancy Status for Women" as in effect on or about October, 1974.

110. Attached hereto as Exhibit 160 is a true copy of excerpts of BUPERS No. 3810170 entitled "Separation of Women with Dependency or Pregnancy Status" and of BUPERS No. 3810180 entitled "Maternity Care Available before and after Separation" as in effect sometime on or about January, 1975.

111. Attached hereto as Exhibit 161 is a true copy of excerpts of BUPERS No. 3850220 entitled "Separation of En-

listed Personnel for Convenience of the Government" as in effect on or about October, 1974.

112. Attached hereto as Exhibit 162 is a true copy of excerpts of SECNAV Instruction 1920.6 as promulgated on or about July 14, 1971.

113. Attached hereto as Exhibit 163 is a true copy of excerpts of Marine Corps Separation and Retirement Manual Part B entitled "Women Officers" as in effect on or about July 4, 1970.

114. Attached hereto as Exhibit 164 is a true copy of excerpts of Marine Corps Separation and Retirement Manual § 6012 entitled "Discharge or Release from Active Duty for Convenience of the Government".

115. Attached hereto as Exhibit 165 is a true copy of excerpts of Marine Corps Military Personnel Procurement Manual as in effect on or about March 15, 1974.

116. Attached hereto as Exhibit 166 is a true copy of excerpts of Marine Corps Military Personnel Procurement Manual Part C entitled "Women Marines — Enlistment and Reenlistment — Marine Corps — Marine Corps Reserves".

117. Attached hereto as Exhibit 167 is a true copy of excerpts of Marine Corps Order 1900.1H as promulgated on or about June 30, 1970.

118. Attached hereto as Exhibit 168 is a true copy of excerpts of the Report of the United States Army Ad Hoc General Officer Steering Committee on Equal Opportunity, released on July 10, 1975 and approved by the Secretary of

the Army. The statements therein may be taken by the Court to be true.

THE PLAINTIFF

By her attorneys,

RICHARD P. WARD
JOHN SILAS HOPKINS, III
STEPHEN B. PERLMAN
ELEANOR D. ACHESON
Ropes & Gray
225 Franklin Street
Boston, Massachusetts

JOHN REINSTEIN
100 Franklin Street
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July 17, 1975

THE DEFENDANTS

By their attorney,

FRANCIS X. BELLOTTI
S. STEPHEN ROSENFELD
ALAN K. POSNER
Assistant Attorneys General
State House
Boston, Massachusetts

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EXHIBIT 1.

FEBRUARY 24, 1973

APPLICATIONS MUST BE RECEIVED IN THE OFFICE OF THE
DIVISION OF CIVIL SERVICE NOT LATER THAN MONDAY,
FEBRUARY 5, 1973

HEAD ADMINISTRATIVE ASSISTANT
(DR. HARRY C. SOLOMON MENTAL HEALTH CENTER)
STATE DEPARTMENT OF MENTAL HEALTH

SALARY: The minimum salary is \$216.90 a week; the maximum salary is \$273.60 a week.

ENTRANCE REQUIREMENTS: Applicants must have at least five years of full-time, or equivalent part-time, paid experience in an administrative or professional capacity in office work

SUBSTITUTIONS:

(1) A bachelor's degree from a recognized school with a major in public or business administration, or government may be substituted for two years of the required experience. (2) A graduate degree from a recognized school with a major in public or business administration, or government may be substituted for two years of the required experience.

Wherever possession of a degree by an applicant is needed in order that he may qualify for entrance to an examination, current enrollment in the last year of study toward the degree, or completion of all the requirements for a degree, will be ac-

cepted as meeting such need. Any applicant so enrolled or who has completed all the requirements for the degree, and who is otherwise qualified, will be considered eligible to apply for the examination. The name of any such applicant will not be placed on the eligible list, however, until proof of his possession of the degree or a copy of an official letter from a college stating that he has completed all the required work for a degree and will receive the degree on a specified date is presented to the Division of Civil Service.

SUBJECTS AND WEIGHTS: Training and experience, 2; practical questions, 3; total, 5.

PHYSICAL FITNESS: To be determined by physical examination.

DUTIES: Under supervision, to give direct assistance in the administrative development of service programs for this first comprehensive community mental health center of the Department of Mental Health; to provide administrative assistance in the area of community clinical expertise; to plan and execute administrative practices and policies; to perform initial ground work in identifying issues and problems thereby assisting the Superintendent in reaching definitive formulation of the steps to take in the establishment of each of the Service programs.

Examples of duties: Planning, setting up and reviewing exchanges of service between Center and private or public agencies; developing administrative arrangements and procedures for working with programs (Drug abuse prevention, Rehabilitation, Alcohol abuse prevention, etc.); coordinating activities of the clinical disciplines and their relations with private and public agencies in the Mental Health Area; conducting overview of the Center's operation based on data reflecting service being rendered by personnel, in order to assign priorities in accordance with demands; being responsible for maintenance of center handbook of operational guidelines in an up-to-date

condition; developing preliminary proposal for area annual plan with Associate Area Director; assisting in preparation of annual preliminary budget proposal and in preparation of final annual budget request; being responsible for Center's Public Relation activities.

The following are required: Knowledge of service program administration such as knowledge of how to evaluate the service needs of mental illness in its many categories, knowledge of the particular skills of the several mental health professional disciplines, knowledge of the contributions community resources can make to restore patients to community life, and knowledge of how to develop organizational structures and procedures that will coordinate professional and community resources to form workable service programs (Some of these programs are education, consultation, prevention, early treatment, after-care and rehabilitation); extensive knowledge of office practices and procedures including office record keeping and appliances; extensive knowledge of the principles of office management and the ability to apply this knowledge to supervisory problems; thorough knowledge of the principles and practices of public and business administration; thorough knowledge of the functions, organizations and laws and regulations governing the agency involved; considerable knowledge of accounting principles and practices; ability to plan, organize and supervise the work of subordinates performing a variety of office functions; ability to develop effective office work procedures and policies; ability to understand and follow complex oral and written instructions; ability to exercise judgment and discretion in applying and interpreting departmental policies and procedures; ability to prepare operating and statistical reports; ability to establish and maintain harmonious working relationships with other employees and the public.

EQUAL EMPLOYMENT OPPORTUNITY EMPLOYER

GENERAL INFORMATION.

Applications may be obtained by applying in person or by letter at the office of the Division of Civil Service, 294 Washington Street, Boston, or from any of the following Civil Service Representatives: Attleboro, Clara Smith; Brockton, Anna Lundquist; Chicopee, Frank Lonczak; Fall River, Ronald J. Lowenstein; Fitchburg, Ruth G. Warrell; Gloucester, Alice F. Fall; Greenfield, Richard H. Howard; Haverhill, Dorothy I. Kelley; Holyoke, Frances T. Hendrickson; Lawrence, Mary F. Gillen; Lowell, Harold F. Winn; Marlborough, Marguerite Bushey; New Bedford, Rosella N. Beauparland; North Adams, Dosalea B. Rhodes; Northampton, David P. Sullivan; Pittsfield, Lawrence A. Grizey, Jr.; Springfield, Ellen V. Cannon; Taunton, Catherine Kerwick; Worcester, Eugene Gardiner. When filled out, the application should be filed at once in the office of the Division of Civil Service, 294 Washington Street, Boston, 02108.

Notice of the time and place of examination, together with a Training and Experience Sheet and any necessary instruction, will be sent to those having applications on file within the required time. **IMPORTANT:** The Training and Experience Sheet must be presented on the day of examination. Experience is marked on the basis of a predetermined schedule for the type of work set forth above and every candidate is marked by the same schedule. The Civil Service Law provides that in the grading of the subject of Training and Experience in any competitive examination, no credit shall be allowed, either in the original marking of the examination, upon review of the original marking by the Director or by the Civil Service Commission, whether upon an appeal from the decision of the Di-

rector or otherwise for any training and employment or experience not fully stated in the training and experience sheet filed at the time of examination.

Each applicant will be notified of the results of his examination within sixty days after the examination has been held. If the results are available earlier, all applicants will be notified.

The names of veterans and widows of veterans and of widowed mothers of veterans who pass the examination and who meet the requirements of General Laws, Chapter 31, Section 23 will be placed upon the eligible list in order of their respective standings above the names of other applicants as provided in that section.

No specimen questions are available.

The Division of Civil Service has no connection with any school offering special instructions by correspondence or otherwise in preparation for civil service examinations. The Division is in no way responsible for any statement contained in the advertisement of any such school.

MABEL A. CAMPBELL, Director of Civil Service

EXHIBIT 2.

Eligible List.

ESTABLISHED BY DIRECTOR OF CIVIL SERVICE

August 24, 1973

Head Adim Assistant

Men Hlth (Dr HCS Men H C)

Examination Held 02/24/73

7 Women — 25 Men Examined

4 Women — 12 Men Eligible

1. Irvin Joseph F. D.V.
77 Hamilton Street Malden
77.40 73-05171 11/17/25 T P Y Y 08/24/73
2. Mangay, Edward P. Vet.
34 Belrose Avenue Lowell
93.28 73-01921 07/06/29 T P Y Y 08/24/73
3. Rodney, Harold Vet.
87 Barouche Drive Marshfield
90.20 73-05924 11/26/32 T P Y Y 08/24/73
4. Ellerton, Robert J. Vet.
8 Hamilton Road Brookline
89.04 73-04960 05/28/45 T P Y Y 08/24/73
5. Spain, Francis J. Vet.
11 Gilwood Road Medford
88.00 73-01920 03/22/21 T P Y Y 08/24/73
6. Makarewicz, Francis E. Vet.
1501 Gorham Street Lowell
86.04 73-04318 11/02/32 T P Y Y 08/24/73
7. Goode, Francis J. Vet.
4 Longspur Road Chelmsford
82.60 73-03325 04/20/28 T P Y Y 08/24/73

8. Cagney, Maurice J. Vet.
10 Garfield Avenue Beverly
82.16 73-05190 07/15/36 T P Y Y 08/24/73
9. Malloy, John G. Vet.
292 Pine Street Fall River
78.24 73-03834 11/13/32 T P Y Y 08/24/73
10. Semrod, Theodore L.
311 South Street Carlisle
94.88 73-05484 03/29/38 T P Y Y 08/24/73
11. Feeney, Helen B.
1826 Lakeview Ave. Dracut
92.32 73-05477 12/09/21 T P Y Y 08/24/73
12. White, Joan C.
7 Alden Avenue Hull
88.63 73-05715 10/08/30 T P Y Y 08/24/73
13. Belinsky, Ruth
109 Wentworth Ave. Lowell
84.12 73-02082 10/01/23 T P Y Y 08/24/73
14. Milot, Edmund B.
10½ Waverly St. Taunton
83.92 73-02386 05/26/46 T P Y Y 08/24/73
15. Chipman, Elizabeth A.
63 Edgewood Road Wayland
82.92 73-04137 03/20/32 T P Y Y 08/24/73
16. Weinberg, John R.
158 Second Street Newton
86.32 73-05196 10/29/45 T P Y Y 08/24/73

No. Denoting Rank on List	Name of Veteran	Discharge Date	Military Branch
1	Irvin, Joseph F.	no application in file	
2	Mangan, E. P.	1948	Navy
3	Rooney, Harold	no military info in file	
4	Ellertsen, Robert J.	1968	Navy
5	Swain, Francis J.	February 1946	Army
6	Makarewicz, F. E.	Feb. 2, 1955	Army
7	Goode, F. J.	no military info in file	
8	Cagney, M. J.	no military info in file	
9	Malloy, John	no military info in file	

DIVISION OF CIVIL SERVICE

CERTIFICATION AND REPORT FORM

DR WILLIAM GOLDMAN, CONMR

DR WILLIAM G. GILBERT
MENTAL HEALTH

190 PORTLAND STREET

190 PORTLAND STREET
BOSTON, MASSACHUSETTS

JOHN SANBOURNE BOCKOVEN, SUPT

COPY TO: DR JOHN SANBOURNE BOCKOVEN, SUPT
ONE PERM HEAD ADMINISTRATIVE ASST @ \$224.05 WK

City or Town.....STATE.....

Department....**RENTAL..HEALTH.....**

• Division SCLOHON..MENTAL..HEALTH

Date.....D.....OCTOBER....3, 1973.

15 12 35 14 14
Regulation No. 401786... 17-61

LOCATION: LOWELL

Below is a list of eligibles in order of standings who have been notified to report to you for an interview. Selection must be made of 3 of the first 3 highest on the list who signify their willingness to accept. *Report of those certified and the action of the appointing officer should be made forthwith in the space provided. Notice of selection of appointment should be forwarded to DIVISION OF CIVIL SERVICE IN QUADRUPPLICATE on Form 14. An appointing authority may examine, if still on file, applications, certificates, examination papers, employment records and stated court records of persons certified, and interview them thereon.

[illegible]

E.V.C.
C-10/24/73

Edward W. Brown
(Mrs.) MABEL A. CAMPBELL, Director of Civil Service

This certification is void if not acted upon within two weeks from its date unless extension is requested and approved.

If extension of authorization of this list requested for an additional two weeks check the reason below:

Inability to make selection within authorized period

Insufficient number of applicants willing to accept and request is ready for additional names

If notification of employment not attached, state when it will be forwarded.

Notification of employment attached

*PLEASE REFER TO REVERSE SIDE OF FORM FOR FURTHER INSTRUCTIONS ON CIVIL SERVICE LAW

at two weeks check the reason below:

as is ready for additional names.

Forwarded by _____ Commissioner

_____ Director

_____ Asst. Dir.

(Official authorized by law or state appointment)

Title: Asst Director of Personnel Management

EXHIBIT 5.

ADMINISTRATIVE ASSISTANT
STATE SERVICE

This examination is held to establish an eligible list to be used to fill vacancies in this classification in all State departments and institutions.

SALARY: The minimum salary is \$185.20 a week; the maximum is \$230.80 a week.

ENTRANCE REQUIREMENTS: Applicants must have at least two years of full-time, or equivalent part-time, paid administrative, managerial or professional experience in the field of office or business administration in work the major duties of which included one or more of the following functions: purchasing, personnel administration, budgetary control and/or accounting.

SUBSTITUTIONS:

(1) A bachelor's or a higher degree from a recognized degree-granting school with a major in personnel, accounting, or public or business administration may be substituted for the required experience. (2) A bachelor's degree from a recognized degree-granting school with a major other than in personnel, accounting, or public or business administration may be substituted for one year of the required experience.

Whenever possession of a degree by an applicant is needed in order to qualify for entrance to an examination, current enrollment in the last year of study toward the degree, or com-

pletion of all the requirements for a degree, will be accepted as meeting such need. Any applicant so enrolled or who has completed all the requirements for the degree, and who is otherwise qualified, will be considered eligible to apply for the examination. The name of any such applicant will not be placed on the eligible list, however, until proof of possession of the degree or a copy of an official letter from a college stating that applicant completed all the required work for a degree and will receive the degree on a specified date is presented to the Division of Civil Service.

SUBJECTS AND WEIGHTS: Training and experience, 2; practical questions, 3; total, 5.

PHYSICAL FITNESS: To be determined by physical examination.

DUTIES: Under the general supervision of an executive or administrative employee of higher grade who reviews work for conformance with departmental policies, to assist in the administration of a State department or institution by performing administrative duties that require a high degree of decision for conformance with departmental regulations and policies; to exercise working supervision over a small number of office employees in the performance of assigned duties; and to perform related work as required.

Examples of duties: (Note: The following examples apply only in reference to general duties performed but not necessarily applicable to all state department requiring services of an administrative assistant.) Assisting in the planning and execution of all matters pertaining to a major phase of the business management or administrative program of a large department or institution and recommending policies designed to meet administrative requirements and to deal effectively with operating needs; planning and supervising administration in a small department, including departmental expenditures and the preparation of payrolls, purchase orders, and

personnel records and reports, payroll disbursement, fiscal and accounting operations, authorizations for payment for materials, services and supplies; advising on administrative problems, acting as liaison with other departments, and consulting as necessary with agencies outside the State government; preparing administrative and fiscal reports and statistical analyses; preparing and following up budget requests; assisting in the preparation of budgets and financial reports; interviewing applicants for various non-professional positions of lower grade, and filling vacancies in accordance with Civil Service Rules and Regulations, performing miscellaneous administrative functions such as the supervision of office maintenance and the purchasing of equipment and supplies; when necessary, developing and carrying out training programs for new employees, teaching basic principles of the work to be performed, reviewing completed assignments, and assisting and advising wherever necessary.

The following are required: Thorough knowledge of the principles and techniques of office and administrative management, including office practices and procedures; thorough knowledge of office record keeping and appliances; considerable knowledge of the principles and practices of public and business administration; following appointment, ability to acquire considerable knowledge of the functions, organizations, and laws and regulations governing the agency involved; ability to plan, organize, and supervise the work of subordinates performing a variety of office functions; ability to develop effective office work procedures; ability to understand and follow complex oral or written instructions; ability to exercise judgment and discretion in applying and interpreting departmental policies and procedures; ability to prepare operating and statistical reports; ability to establish and maintain harmonious relationships with other employees and the public.

NOTE: The Director of Civil Service may deem the results of this examination to be suitable for use in filling requisitions for positions which are similar in duties, responsibilities and qualifications.

EXAMINATION CENTERS AND CODE NUMBERS TO BE
USED ON THE APPLICATION CARD OR CIVIL
SERVICE EXAMINATION (FORM) ARE LISTED
ON THE OTHER SIDE OF THIS
EXAMINATION ANNOUNCEMENT.

GENERAL INFORMATION

Application cards (Form 1) may be obtained by applying in person or by letter at the office of the Division of Civil Service, 294 Washington Street, Boston, or from any of the following Civil Service Representatives: Attleboro, Clara Smith; Brockton, Anna Lundquist; Chicopee, Frank Lonczak; Fall River, Ronald J. Lowenstein; Fitchburg, Ruth G. Warrell; Gloucester, Alice F. Fall; Greenfield, Richard H. Howard; Haverhill, Dorothy I. Kelley; Holyoke, Frances T. Hendrickson; Lawrence, Joseph Smith, City Clerk; Lowell, Joseph F. Dowd; Marlborough, Marguerite Bushey; New Bedford, Rosella N. Beauparland; North Adams, Dosalea B. Rhodes; Northampton, David P. Sullivan; Pittsfield, Lawrence A. Grizey, Jr.; Springfield, Ellen V. Cannon; Taunton, Catherine Kervick; Worcester, Eugene Gardiner. When filled out, the application card should be filed at once in the office of the Division of Civil Service, 294 Washington Street, Boston, 02108.

Notice of the time and place of examination, together with an application form (Form 1E), a Training and Experience Sheet and any necessary instruction, will be sent to those hav-

ing applications on file within the required time. **IMPORTANT:** The Training and Experience Sheet must be presented on the day of examination. Experience is marked on the basis of a predetermined schedule for the type of work set forth above and every candidate is marked by the same schedule. The Civil Service Law provides that in the grading of the subject of Training and Experience in any competitive examination, no credit shall be allowed, either in the original marking of the examination, upon review of the original marking by the Director or by the Civil Service Commission, whether upon an appeal from the decision of the Director or otherwise for any training and employment or experience not fully stated in the training and experience sheet filed at the time of examination.

Each applicant will be notified of the results of examination.

The names of veterans, of certain widows of veterans and of certain widowed mothers of veterans (see G.L. c. 31, § 23B), who pass the examination and who meet the requirements of General Laws, Chapter 31, Section 23 will be placed upon the eligible list in order of their respective standings above the names of other applicants as provided in Section 23.

No specimen questions are available.

The Division of Civil Service has no connection with any school offering special instructions by correspondence or otherwise in preparation for civil service examination. The Division is in no way responsible for any statement contained in the advertisement of any such school.

Edward W. Powers, Director of Civil Service.

EQUAL OPPORTUNITY EMPLOYERS

EXHIBIT 6.

DIVISION OF CIVIL SERVICE

Eligible List

ESTABLISHED BY DIRECTOR OF CIVIL SERVICE

April , 1975

Administrative Assistant

State Service

EXAMINATION HELD 05/18/74

169 Women 295 Men Examined

27 Women 136 Men Eligible

1. Malloy, Charles H. 567 Winthrop Street	D.V. 88.00 74-43227 Medford	05/07/18 TP Y
2. Linehan, Leo M. MCDA400 Worcester Rd.	Vet. 94.00 74-20810	11/15/26 OP N

3. Finn Jr., Henry L.
664 Shaker Road
4. Lynch, Kalman J.
99 Reservation Road
5. Brown, Maurice C.
12 Isabell Circle
6. Kelly, Thomas F.
7 Valentine Road
7. Morse, Robert W.
22 Liberty Street
8. Natola, Generoso J.
77 Trenton Street
9. Collins, James R.
180 Main St. A6108
10. Smith, Albert W.
38 Spring Pk Ave. Air
11. Stundze, Ronald F.
91 Regal Street
12. Gundelman, Morton, N.
31 1/4 Englewood Ave

Vet. 92.00 74-36774 02/04/16 TP Y
Longmeadow
Vet. 92.00 74-32168 10/19/18 OP N
Andover
Vet. 90.00 74-42472 05/20/13 OP N
Randolph
Vet. 90.00 74-43966 11/05/22 OP N
Arlington
Vet. 90.00 74-43992 02/27/17 OP N
Beverly
Vet. 89.00 74-24176 02/14/18 OP N
East Boston
Vet. 88.00 74-25504 08/24/25 OP N
Bridgewater
Vet. 88.00 74-21210 12/22/46 OP N
Boston
Vet. 88.00 74-39356 07/29/33 TP Y
Whitman
Vet. 87.00 74-39889 11/16/22 TP Y
Brookline

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13. Swain, Francis J.
4 Wildwood Road
14. Casella, Natal J.
4 Traymore Street
15. Incrovato, James D.
5 Lexington Avenue
16. Rooney, Harold H.
67 Barouche Drive
17. Rowland, Joseph M.
12 Aberdeen Street
18. Callagy, Thomas A.
46 Foster Street
19. Harrington, Joseph P.
101 Ashland Street
20. Kerig, John A.
184 West Street
21. Murphy, Jeremiah V.
34 Old Barnstable Rd.
22. Vito, Henry J.
63 Norfolk Street

Vet. 87.00 74-38027 03/22/21 TP N
Medford
Vet. 86.00 74-24500 01/29/15 TP Y
Cambridge
Vet. 86.00 74-34831 04/14/33 TP Y
East Boston
Vet. 86.00 74-39132 11/26/32 TP Y
Marshfield
Vet. 86.00 74-25442 07/25/45 TP N
Boston
Vet. 85.00 74-37660 01/21/20 OP N
North Andover
Vet. 85.00 74-37043 09/05/18 TP Y
Malden
Vet. 85.00 74-33317 05/10/18 TP Y
Osterville
Vet. 85.00 74-36064 12/03/24 OP N
E. Falmouth
Vet. 85.00 74-27974 05/01/28 TP Y
Worcester

115

23. Higgins, Richard D.
P.O. Box 264
24. Kessler, Simon M.
262 Shirley Street
25. Slamin, Joseph W.
38 Marlton Road
26. Campbell, Eugene J.
81-A Norwood Avenue
27. Cawley Jr. Joseph P.
86 Kenwood Street
28. Hartwell, Ivan G.
21 Little Bay Lane
29. McCarney, Thomas J.
475 Weld Street
30. Armstrong Jr. Albert E.
135 Winthrop St. A-24
31. King, Albert W.
110 Lyman Road
32. Latremouille, Robert J.
67 Highland Ave. A2

Vet.	84.00	74-36919	12/22/19	TP	N
Peabody					
Vet.	84.00	74-23800	08/23/18	TP	Y
Winthrop					
Vet.	84.00	74-36068	01/01/31	TP	N
Waltham					
Vet.	83.00	74-43994	02/17/31	TP	N
Newton Center					
Vet.	83.00	74-14395	10/28/47	OP	N
Dorchester					
Vet.	83.00	74-30636	05/17/33	TP	Y
Buzzards Bay					
Vet.	83.00	74-26037	09/22/40	TP	N
West Roxbury					
Vet.	82.00	74-22673	07/11/44	TP	Y
Framingham					
Vet.	82.00	74-43411	12/05/20	OP	N
Milton					
Vet.	82.00	74-36290	11/16/42	TP	Y
Cambridge					

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33. Grublin, Alex R.
22 Rita Road
34. Hurley, John P.
54 Parkman Street
35. Jaeger, Robert C.
404 Massachusetts Ave.
36. Kovacs, Henry E.
2 Prospect Street
37. Leavy, Gerald B.
182 Linden Street
38. Cagney, Maurice J.
10 Garfield Avenue
39. Gilday, John A.
28 Castle Street
40. Hogan, Harry V.
41 Poulos Road
41. Martorano, Nicholas B.
2 Orris Place
42. O'Leary, John T.
30 Auburn Street

Vet.	81.00	74-38024	12/08/17	TB	Y
Dorchester					
Vet.	81.00	74-24580	07/23/45	TP	N
Dorchester					
Vet.	81.00	74-41129	01/15/46	TP	N
Arlington					
Vet.	81.00	74-42278	03/10/21	OP	N
Williamstown					
Vet.	81.00	74-38781	08/08/45	TP	N
Everett					
Vet.	80.00	74-32677	07/15/36	TP	N
Beverly					
Vet.	80.00	74-33041	04/26/45	OP	N
Springfield					
Vet.	80.00	74-42881	04/09/32	OP	N
Braintree					
Vet.	80.00	74-43688	12/09/44	TP	Y
Melrose					
Vet.	80.00	74-26148	08/20/34	TP	N
Malden					

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43. Prager, Bruce R.
575 Broad St. A114
44. Sherman, May F.
353 Elm St. Apt. 302
45. Sullivan, Richard J.
6 Mt. Vernon Street
46. O'Donnell, Dennis M.
105 Warren Avenue
47. Philbrick, Bruce H.
53 O'Dell Avenue
48. Recko, William R.
34 Evergreen Road
49. Ernst, David R.
125 Lovell Road
50. Leacock, William R.
80X675 Fed. Station
51. Murstein, Irving
10 Copeland Street
52. Scull Jr. Edward T.
38 Jay Street

Vet. 80.00	74-32687	12/27/47	OP	N
Weymouth				
Vet. 80.00	74-30175	03/17/26	TP	Y
Lawrence				
Vet. 80.00	74-23806	03/28/46	TP	Y
Saugus				
Vet. 79.00	74-43114	06/08/40	TP	N
Chelmsford				
Vet. 79.00	74-37045	12/05/49	TP	N
Beverly				
Vet. 79.00	74-21807	03/10/33	TP	N
Stoneham				
Vet. 78.00	74-32831	01/08/45	TP	N
Watertown				
Vet. 78.00	74-35424	08/26/20	TP	N
Worcester				
Vet. 78.00	74-30025	09/03/33	TP	Y
Quincy				
Vet. 78.00	74-23201	12/13/44	OP	N
Somerville				

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53. Collins, William J.
23 Prospect Avenue
54. Demeritt, Roger S.
P.O. Box 531
55. Hart, Robert E.
21 Windom Street
56. Kelly, John P.
104 1-2 Wash. St. A-2
57. Philbrick, Donald M.
53 ODell Avenue
58. Drever, Robert I.
91 Crest Avenue
59. Codinha, Paul P.
6 Beacon Blvd.
60. Crisafulli, Anthony F.
351 Engamore Lane
61. Phillips, Edward A.
289 Fifth Street
62. Ruddy, Richard A.
496 Mill Street

Vet. 77.00	74-43665	12/28/48	TP	N
Rosindale				
Vet. 77.00	74-40370	12/17/44	TP	N
Newburyport				
Vet. 77.00	74-21846	01/11/47	TP	N
Somerville				
Vet. 77.00	74-29592	12/13/46	TP	N
Ayer				
Vet. 76.00	74-29794	09/03/46	OP	N
Beverly				
Vet. 75.00	74-32821	06/18/20	OP	N
Chelsea				
Vet. 74.00	74-28586	06/07/39	OP	N
Peabody				
Vet. 74.00	74-27393	11/12/43	OP	N
Norwood				
Vet. 74.00	74-42493	07/08/39	TP	N
Fall River				
Vet. 73.00	74-42984	02/16/47	OP	N
Worcester				

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63. Seroll, William G. 29 Wilson Park	Vet. 73.00	74-20781	12/07/47	OP	N
64. McCarthy, Joseph M. 25 Old Pasture Road	92.00	74-34350	04/25/23	TP	Y
65. Vericella, John R. 210 Summer Street	91.00	74-37040	08/21/29	TP	Y
66. Budreski, Francis A. 20 Adin Drive	90.00	74-23257	05/06/29	OP	N
67. Clancy, Dorothea C. 20 Maple Street	89.00	74-30437	12/17/26	TP	Y
68. Fitzgerald, Joan 46 Irving Street	88.00	74-46457	05/10/46	TP	Y
69. Barrette, Richard T. 8 Wesley St. Apt. 3	87.00	74-42381	03/18/38	TP	N
70. Feeney, Helen B. 1826 Lakeview Avenue	87.00	74-20808	12/09/21	TP	Y
71. Hagan, N. Stephen 1 Adrienne Drive	87.00	74-36062	07/29/40	TP	N
72. Howes, Alan G. 67 Millstone Road	87.00	74-34043	05/11/09	OP	N

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73. Robert Jr. Hubert E. 570 Bay Road	86.00	74-29928	06/25/49	TP	Y
74. Thompson, Luke E. 62 Clark Street	86.00	74-43856	09/05/48	TP	N
75. Buchanan, Marie G. 845 Columbia Road	85.00	74-42211	12/28/22	TP	Y
76. Thomas, Barbara A. 780 Boylston St. A-4D	85.00	74-27944	02/04/29	OP	N
77. Gallery, Walter F. 11 Harrington Avenue	84.00	74-40366	04/11/47	TP	N
78. O'Loughlin, Lucinda E. 12 Buck Street	84.00	74-43953	04/09/44	OP	N
79. Reagan, Patrick W. 23 North Lane	84.00	74-43145	06/12/50	TP	N
80. Thrasher, Sara L. 122 Warren St. A12	84.00	74-26712	01/10/45	TP	Y
81. Wiot, Frank C. 314 Highland Avenue	84.00	74-36596	07/13/31	TP	N
82. Brombier, Marshall 1 Canton Road Apt 2	83.00	74-41127	02/22/43	TP	N

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83. Coffey, William F. 3 Haskell Street	83.00 74-32130 07/15/49 OP N	Norton
84. Crouse, Nancy E. 42 Clewley Road	83.00 74-39012 03/14/42 TP Y	Medford
85. Deren, Gloria J. 130 Bowdoin St. A1106	83.00 74-42977 05/09/50 OP N	Boston
86. Donovan, John T. 15 Sherman Road	83.00 74-34829 10/20/35 TP Y	Dedham
87. Keough, Paul G. 24 Glenellen Road	83.00 74-24420 07/21/52 TP Y	West Roxbury
88. Lynch, Frederick E. 132 Magazine Street	83.00 74-26208 12/24/41 OP N	Cambridge
89. O'Brien, Marnette S. 122 Babcock Street	83.00 74-25865 11/06/34 TP N	Brookline
90. Brandies, Paul S. 23 Lanark Road	82.00 74-26160 12/17/49 OP NN	Brighton
91. Cogen, Bernice E. 17 Ruck Glen Circle	82.00 74-37309 12/27/17 TP NN	Medford
92. Guttwald, John F. 8 Fairlawn Avenue	82.00 74-42775 01/23/50 TP NN	Mattapan

122

93. Russo, Ronald J. 64 Marlboro Street	82.00 74-21209 12/06/42 TP YY	Belmont
94. Rolger, Jeffery S. 570 North Main St.	81.00 74-20804 02/22/50 TP YY	Randolph
95. Dube, Peter C. 350 Acrebrook Drive	81.00 74-35150 04/27/49 TP NN	Florence
96. Heining, Thomas H. 227 Chapman Street	81.00 74-39570 03/30/37 TP YY	Greenfield
97. Kaufman, Judith A. 41 Ridgemont Street	81.00 74-40579 12/24/46 TP NN	Brighton
98. McManus, Michael T. 74 Francis Street	81.00 74-39010 09/03/46 TP NN	Boston
99. Naughton, Thomas J. 137 Bridge Street	81.00 74-35328 03/14/48 OP NN	Newton
100. O'Hearn, Barbara P.O. Box 178	81.00 74-43147 07/15/23 TP NN	Pittsfield
101. Saller, Edward G. 21 Evergreen Ave. 13B	81.00 74-27138 11/04/47 OP NN	Hartford
102. Short Jr. William D. 193 High Street	81.00 74-39887 05/29/48 OP NN	Greenfield

123

103. Sonnenberg, Margaret W. 25 Curtis Street	81.00 74-33706	10/27/14	OP	NN
104. Thompson, Joan P. 47 Summer St. Apt. 4	81.00 74-27447	09/13/32	TP	YY
105. Carbine, David J. 430 Main Street	80.00 74-30650	05/02/44	TP	YY
106. Duhigg, Michael F. 46 Pine Point Road	80.00 74-25341	12/20/43	TP	NN
107. Facchetti, Edward 48 Carey Road	80.00 74-38907	06/05/50	OP	NN
108. Levites, Alan G. 13 Gloucester Street	80.00 74-39083	11/14/44	OP	NN
109. Offutt, Timothy L. 19 17 W. Baltimore St.	80.00 74-26180	05/28/49	TP	NN
110. Phelan, Joseph E. P.O. Box 419	80.00 74-31031	09/24/48	TP	YY
111. Rapo, Paul S. 31 Goddard Street	80.00 74-42982	04/09/48	TP	YY
112. Sleison, William L. 160 Clark Street	80.00 74-31241	04/24/51	TP	NN

124

113. St. Cyr Jr. Lawrence M. 453 Patterson Hse.	80.00 74-29217	02/10/52	TP	NN
114. Thompson, Kathryn E. 12 Agawam Road	80.00 74-27119	03/20/19	TP	YY
115. Boyadjian, James A. 68 Morningside Drive	79.00 74-34744	02/16/48	TP	YY
116. Cusick, Ursula 43 Cushing Street	79.00 74-43998	05/09/17	TP	YY
117. Hines, Patrick J. 88 Cherry Street	79.00 74-29749	08/23/50	TP	YY
118. Lewicki, Mitchell F. 777 Lagrange Street	79.00 74-24187	06/03/47	TP	NN
119. Picardo, Steven A. 195 Sheridan Avenue	79.00 74-26653	02/08/49	TP	NN
120. Ruderman, Bruce M. 45 Sheridan Dr. A12	79.00 74-24947	12/19/49	TP	NN
121. Shanahan, Eunice P. 6 North Ames Street	79.00 74-30556	12/29/19	OP	NN
122. Hertz, George K. 30 Allston St. Apt. 35	78.00 74-42242	06/18/46	TP	NN

125

123. Koblinsky, Joseph P. 43 Acton Street	78.00	74-32487	08/02/48	TP	NN
124. Skerry Jr. Richard A. 110 Washington St.	78.00	74-36291	05/14/51	TP	NN
125. Smith, Gisele L. 15 Raleigh Road	78.00	74-36067	02/04/24	TP	NN
126. Boncoddio, Gerard J. 54 Selwyn Road	77.00	74-27907	04/03/52	TP	NN
127. Borrero, Joan 25 Lorraine Terrace	77.00	74-37586	08/06/37	TP	YY
128. Curley, Gertrude A. 373 Main Street	77.00	74-44024	09/24/21	TP	YY
129. Donovan, Marion F. 952 East Broadway	77.00	74-27451	02/18/32	TP	NN
130. Gallagher, George M. 10 Vesey Road	77.00	74-38323	04/01/40	TP	NN
131. Hartnett Jr, Leo M. 13 Sharon Avenue	77.00	74-42727	12/09/52	TP	NN
132. Lettich, Mark R. 24 Sunset Road	77.00	74-41408	07/19/51	OP	NN

126

133. Loatham, Barbara S. 15 Fenwick Place	77.00	74-26194	09/21/33	TP	YY
134. Loda, Peter W. 106 Revere Street	77.00	74-38789	04/05/49	OP	NN
135. Pysz, Paul E. 200 Kelton Street A5	77.00	74-35049	09/06/50	TP	NN
136. Wholey, James J. 14 Shadow Drive	77.00	74-41130	07/30/52	TP	
137. Carabetta, Michael R. 128 Elm Street	76.00	74-35048	05/23/49	OP	
138. Connolly, David H. 63 Summer Street	76.00	74-28217	10/07/46	TP	
139. Fursythe, Jeffrey P. 644 Adams Street	76.00	74-40145	02/28/51	OP	
140. Hirshberg, Robert M. 25 Brighton Ave. A3	76.00	74-39564	10/30/48	TP	
141. Johnson, Chester G. 116 So. Main Street	76.00	74-39018	06/07/47	TP	
142. Kerivan, Rita M. 75 Pilgrim Road	76.00	74-34042	12/20/19	TP	

127

143. Waldman, James T.
40 Monastery Road
144. Day, William A.
78 Lake Shore Drive
145. Frazier, Grant T.
57 Garfield Avenue
146. Jamilkowski, Michael L.
15 Peckham Street
147. Kelley Jr. Francis M.
66 William Street
148. Lotti, John J.
102 Sachem Street
149. Halley, Kevin H.
476 Beacon Street
150. Orr, Daniel J.
34 Lindenwood Road
151. Scaglione Jr. Peter T.
16 Clancy Street
152. Tomlinson, David P.
218 Lakeshore Dr. A3

76.00	74-33368	07/28/50	TP
Brighton			
75.00	74-43097	11/24/49	TP
Dracut			
75.00	74-24815	05/16/47	OP
Weymouth			
75.00	74-28252	04/17/48	OP
New Bedford			
75.00	74-30929	10/30/47	TP
Walpole			
75.00	74-44021	01/09/45	TP
Wollaston			
75.00	74-42352	06/25/49	TP
Boston			
75.00	74-21386	11/05/46	OP
Stoneham			
75.00	74-43820	07/28/46	OP
Chelmsford			
75.00	74-43412	02/16/43	OP
Brighton			

128

153. Decker, John F.
35 Woodland Road
154. Mazzaferro, Linda A.
62 Castle Road
155. O'Malley, William F.
44 Humphreys Street
156. Reardon, Joseph J.
23 Partridge Avenue
157. Ruggiero, Wayne A.
37 Poole Street
158. McClure, John S.
20 Spalding Street
159. Milano, Arthur H.
10 California Park
160. Zazopoulos, Andrew A.
5 Downing Avenue
161. Lutz, Dale A.
62 Carey Ave. Apt. 4
162. Neild, Roger B.
39 Myrtle Street

74.00	74-38018	06/15/43	TP
Holden			
74.00	74-38664	07/06/49	OP
Nahant			
74.00	74-34675	03/13/44	TP
Dorchester			
74.00	74-35668	02/09/41	TP
Somerville			
74.00	74-33705	01/27/53	TP
Medford			
73.00	74-43222	03/10/49	TP
Jamaica Plain			
73.00	74-47690	02/16/39	OP NN
Watertown			
73.00	74-20737	10/14/50	TP YY
Haverhill			
72.00	74-27392	09/14/49	TP YY
Watertown			
72.00	74-43659	11/16/49	TP YY
Everett			

129

163. Rosenberg, Ellen B.
44 Atherton Road

72.00 74-38019 11/01/52 TP NN
Brookline

END OF REPORT

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131

SUPPLEMENTARY SHEET

Administrative Assistant, State Service

Exam. Held 5.18.74 Elig. Date 5.13.75

- 1 — McCrann, Eunice R. 74-29751 Civ. 75.00
6 Laban Pratt Rd.
Neponset
4.24.75 Comm. voted to accept experience as meeting entrance requirements

5.16.75 Placed on elig. list bd

EXHIBIT 7.

June 25, 1973

Administrative Asst.

1. Malloy, Charles, H. 567 Winthrop Street	D.V. 88.00 74-43227	03/07/18	TP YY
2. Incrovato, James D. 5 Lexington Avenue	D.V. 86.00 74-34831	04/14/33	TP Y
3. Rowland, Joseph M. 12 Aberdeen Street	D.V. 86.00 74-25442	07/25/45	TP N
4. Higgins, Richard D. P.O. Box 264	D.V. 84.00 74-36919	12/22/19	TP N
5. Linehan, Leo M. MCDA400 Worcester Rd.	Vet. 94.00 74-20810	11/15/26	OP N
6. Finn Jr., Henry L. 664 Shaker Road	Vet. 92.00 74-36774	02/04/16	TP Y
7. Lynch, Kalman J. 99 Reservation Road	Longmeadow Vet. 92.00 74-32168	10/19/18	OP N
8. McCarthy, Joseph H. 25 Old Pasture Road	Andover Vet. 92.00 74-34350	04/25/23	TP YY
	Cohasset		

132

9. Brown, Maurice C. 12 Isabell Circle	Vet. 90.00 74-42472	05/20/13	OP NN
10. Kelly, Thomas F. 7 Valentine Road	Randolph Vet. 90.00 74-43966	10/05/33	OP NN
11. Morse, Robert W. 22 Liberty Street	Arlington Vet. 90.00 74-43992	02/27/17	OP NN
12. Natola, Generoso J. 77 Trenton Street	Beverly Vet. 89.00 74-24176	02/14/18	OP NN
13. Collins, James R. 180 Main St. A6108	East Boston Vet. 88.00 74-25504	08/24/25	OP NN
14. Smith, Albert W. 38 Spring Pk Av A1R	Bridgewater Vet. 88.00 74-21210	12/22/46	OP NN
15. Stundze, Ronald F. 91 Regal Street	Boston Vet. 88.00 74-39356	07/29/33	TP YY
16. Gondelman, Morton N. 31 1/2 Englewood Ave	Whitman Vet. 87.00 74-39889	11/16/22	TP YY
17. Swain, Francis J. 4 Wildwood Road	Brookline Vet. 87.00 74-38027	03/22/21	TP NN
Casella, Natal J. 4 Trayhore Street	Medford Vet. 86.00 74-24500	01/29/13	TP YY
	Cambridge		

133

19. Rooney, Harold H.
67 Barouche Drive
20. Callagy, Thomas A.
46 Foster Street
21. Harrington, Joseph P.
101 Ashland Street
22. Kerig, John A.
184 West Street
23. Murphy, Jeremiah V.
34 Old Barnstable Rd
24. Vito, Henry J.
63 Norfolk Street
25. Kessler, Simon H.
262 Shirley Street
26. Slamin, Joseph W.
38 Marlton Road
27. Campbell, Eugene J.
81-A Norwbid Avenue
28. Cawley Jr, Joseph P.
86 Kenwood Street

Vet. 86.00 74-39132 11/26/32 TP YY
Marshfield
Vet. 85.00 74-37663 01/21/20 OP NN
North Andover
Vet. 85.00 74-37043 09/05/13 TP YY
Malden
Vet. 85.00 74-33317 05/10/18 TP YY
Osterville
Vet. 83.00 74-36064 12/03/24 OP NN
E. Falmouth
Vet. 85.00 74-27974 05/01/28 TP YY
Worcester
Vet. 84.00 74-23800 08/23/18 TP YY
Winthrop
Vet. 84.00 74-36068 01/01/31 TP NN
Waltham
Vet. 83.00 74-43994 02/17/31 TP NN
Newton Center
Vet. 83.00 74-14395 10/28/47 OP NN
Dorchester

29. Hartnell, Ivan G.
21 Little Bay Lane
30. McCarney, Thomas J.
475 Weld Street
31. Armstrong Jr, Albert E.
135 Winthrop St. A-24
32. King, Albert W.
110 Lyman Road
33. Latremouille, Robert J.
67 Highland Ave. A2
34. Grublin, Alex R.
22 Rita Road
35. Hurley, John P.
54 Parkman Street
36. Jaeger, Robert C.
404 Massachusetts Ave
37. Kovacs, Henry E.
2 Prospect Street
38. Leavy, Gerald B.
182 Linden Street

Vet. 83.00 74-30636 05/17/33 TP YY
Buzzards Bay
Vet. 83.00 74-26037 09/22/40 TP NN
West Roxbury
Vet. 82.00 74-22673 07/11/44 TP YY
Framingham
Vet. 82.00 74-43411 12/05/20 OP NN
Milton
Vet. 82.00 74-36290 11/16/42 TP YY
Cambridge
Vet. 81.00 74-38024 12/08/17 TP YY
Dorchester
Vet. 81.00 74-24580 07/23/45 TP NN
Dorchester
Vet. 81.00 74-41129 01/15/45 TP NN
Arlington
Vet. 81.00 74-42278 03/10/21 OP NN
Williamstown
Vet. 81.00 74-38781 08/08/45 TP NN
Everett

39. Cagney, Maurice J.
10 Garfield Avenue
40. Gilday, John A.
28 Castle Street
41. Hogan, Harry V.
41 Poulos Road
42. Martorano, Nicholas B.
2 Orris Place
43. Oleary, John T.
30 Auburn Street
44. Prager, Bruce R.
575 Broad St. A114
45. Sherman, May F.
353 Elm St. Apt. 302
46. Sullivan, Richard J.
6 Mt. Vernon Street
47. O'Donnell, Dennis M.
105 Warren Avenue
48. Philbrick, Bruce H.
53 Odell Avenue

Vet. 80.00 74-32677 07/15/36 TP NN
Beverly
Vet. 80.00 74-33041 04/26/45 OP NN
Springfield
Vet. 80.00 74-42881 04/09/32 OP NN
Braintree
Vet. 80.00 74-43688 12/09/44 TP YY
Melrose
Vet. 80.00 74-26148 08/20/34 TP NN
Malden
Vet. 80.00 74-32687 12/27/47 OP NN
Weymouth
Vet. 80.00 74-30175 03/17/20 TP YY
Lawrence
Vet. 80.00 74-23806 03/28/46 TP YY
Saugus
Vet. 79.00 74-43114 06/08/40 TP NN
Chelmsford
Vet. 79.00 74-37045 12/05/49 TP NN
Beverly

136

49. Recko, William R.
34 Evergreen Road
50. Ernst, David R.
125 Lovell Road
51. Leacock, William R.
Box 675 Fed. Station
52. Murstein, Irving
10 Copeland Street
53. Scull Jr, Edward T.
38 Jay Street
54. Collins, William J.
23 Prospect Avenue
55. Demeritt, Roger S.
P.O. Box 531
56. Hart, Robert E.
21 Windom Street
57. Kelly, John P.
104 1-2 Wash. St. A-2
58. Philbrick, Donald M.
53 Odell Avenue

Vet. 79.00 74-21807 03/10/33 TP NN
Stoneham
Vet. 78.00 74-32831 01/08/45 TP NN
Watertown
Vet. 78.00 74-35424 08/26/20 TP NN
Worcester
Vet. 78.00 74-30025 09/03/33 TP YY
Quincy
Vet. 78.00 74-23201 12/13/44 OP NN
Somerville
Vet. 77.00 74-43665 12/23/48 TP NN
Roslindale
Vet. 77.00 74-40370 12/17/44 TP NN
Newburyport
Vet. 77.00 74-21846 01/11/47 TP NN
Somerville
Vet. 77.00 74-29592 12/13/46 TP NN
Ayer
Vet. 76.00 74-29794 09/03/46 OP NN
Beverly

137

59. Drever, Robert I.
91 Crest Avenue
60. Codinha, Paul P.
6 Beacon Blvd.
61. Crisafulli, Anthony F.
351 Engamore Lane
62. Phillips, Edward A.
289 Fifth Street
63. Ruddy, Richard A.
496 Mill Street
64. Seroll, William G.
29 Wilson Park
65. Vericella, Joan R.
210 Summer Street
66. Budreski, Francis A.
20 Adin Drive
67. Clancy, Dorothea C.
20 Maple Street
68. Fitzgerald, Joan
46 Irving Street

Vet. 75.00 74-32821 06/18/20 OP NN
Chelsea
Vet. 74.00 74-28586 06/07/39 OP NN
Peabody
Vet. 74.00 74-27393 11/12/43 OP NN
Norwood
Vet. 74.00 74-42493 07/08/39 TP NN
Fall River
Vet. 73.00 74-42984 02/16/47 OP NN
Worcester
Vet. 73.00 74-20781 12/07/47 OP NN
Brighton
91.00 74-37040 08/21/29 TP YY
Haverhill
90.00 74-23257 03/06/29 OP NN
Concord
89.00 74-30437 12/17/26 TP YY
West Roxbury
88.00 74-46457 03/10/46 TP YY
Cambridge

138

69. Barrette, Richard T.
8 Wesley St. Apt. 3
70. Feeney, Helen B.
1826 Lakeview Avenue
71. Hagan, N. Stephen
1 Adrienne Drive
72. Howes, Alan G.
67 Millstone Road
73. Robert Jr., Hubert E.
570 Bay Road
74. Thompson, Luke E.
62 Clark Street
75. Buchanan, Marie G.
845 Columbia Road
76. Kusek, Helena M.
118 Walnut Street
77. Thomas, Barbara A.
780 Boylston St. A-4D
78. Gallery, Walter F.
11 Harrington Avenue

87.00 74-42381 03/18/38 TP NN
Newton
87.00 74-20808 12/09/21 TP YY
Dracut
87.00 74-36062 07/29/40 TP NN
Canton
87.00 74-34043 05/11/09 OP NN
Hyde Park
86.00 74-29928 06/25/49 TP YY
Amherst
86.00 74-43836 09/05/48 TP NN
Worcester
85.00 74-42211 12/28/22 TP YY
Dorchester
85.00 74-27055 10/18/19 TP YY
Holyoke
85.00 74-27944 02/04/29 OP NN
Boston
84.00 74-40366 04/11/47 TP NN
Quincy

139

79. Hernon, Mildred M.
82 Kemper Street

80. O'Loughlin, Lucinda E.
12 Buck Street

81. Reagan, Patrick W.
23 North Lane

82. Thrasher, Sara L.
122 Warren St. Apt. 12

83. Widt, Frank C.
314 Highland Avenue

84. Allen, Esther A.
29 McCormack Street

85. Brombier, Marshall
1 Canton Road Apt. 2

86. Coffey, William F.
3 Haskell Street

87. Crouse, Nancy E.
42 Clewley Road

88. Deren, Gloria J.
130 Bowdoin St. Apt. 1106

84.00 74-27943 06/29/32 OP NN
Wollaston

84.00 74-43953 04/09/44 OP NN
Newburyport

84.00 74-43145 06/12/50 TP NN
Hadley

84.00 74-26712 01/10/45 TP YY
Brighton

84.00 74-36596 07/13/31 TP NN
Quincy

83.00 74-30684 09/29/06 TP YY
Malden

83.00 74-41127 02/22/43 TP NN
North Quincy

83.00 74-32130 07/15/49 OP NN
Norton

83.00 74-39012 03/14/42 TP YY
Medford

83.00 74-42977 05/09/50 OP NN
Boston

140

89. Donovan, John T.
14 Sherman Road

90. Keough, Paul G.
24 Glenellen Road

91. Lynch, Frederick E.
132 Magazine Street

92. O'Brien, Marnette S.
122 Babcock Street

93. Brandeis, Paul S.
23 Lanark Road

94. Breen, Dorothy M.
132 Magazine Street

95. Cogen, Bernice E.
17 Rock Glen Circle

96. Gottwald, John F.
8 Fairlawn Avenue

97. Russo, Ronald J.
64 Marlboro Street

98. Bolger, Jeffrey S.
570 North Main Street

83.00 74-34829 10/20/35 TP YY
Dedham

83.00 74-24420 07/21/52 TP YY
West Roxbury

83.00 74-26208 12/24/41 OP NN
Cambridge

83.00 74-25865 11/06/34 TP NN
Brookline

82.00 74-26160 12/17/49 OP NN
Brighton

82.00 74-26209 03/24/17 TP YY
Cambridge

82.00 74-37309 05/27/17 TP NN
Medford

82.00 74-42773 01/23/50 TP NN
Mattapan

82.00 74-21209 12/06/42 TP YY
Belmont

81.00 74-20804 02/22/50 TP YY
Randolph

141

99. Dube, Peter C.
350 Acrebrook Drive
100. Heinig, Thomas H.
227 Chapman Street
101. Kaufman, Judith A.
41 Ridgemont Street
102. McManus, Michael T.
74 Francis Street
103. Naughton, Thomas J.
137 Bridge Street Apt. 3
104. O'Hearn, Barbara
P.O. Box 178
105. Saller, Edward G.
21 Evergreen Ave. Apt. 138
106. Short Jr., William D.
193 High Street
107. Sonnenberg, Margaret W.
25 Curtis Street
108. Thompson, Joan P.
47 Summer St. Apt. 4

81.00 74-35130 04/27/49 TP NN
Florence
81.00 74-39570 03/30/37 TP YY
Greenfield
81.00 74-40579 12/24/46 TP NN
Brighton
81.00 74-39010 09/03/46 TP NN
Boston
81.00 74-35328 03/14/48 OP NN
Newton
81.00 74-43147 07/15/23 TP NN
Pittsfield
81.00 74-27138 11/04/47 OP NN
Hartford
81.00 74-39387 05/29/48 OP NN
Greenfield
81.00 74-33708 10/27/14 OP NN
Somerville
81.00 74-27447 09/13/32 TP YY
Waltham

142

109. Carbine, David J.
430 Main Street
110. Duhigg, Michael F.
46 Pine Point Road
111. Facchetti, Edward
48 Carey Road
112. Levites, Alan G.
13 Gloucester Street
113. O'Brien, Sarah H.
118 Town Street
114. Offutt, Timothy L.
19 17 W Baltimore St.
115. Phelan, Joseph E.
P.O. Box 419
116. Rapo, Paul S.
31 Goddard Street
117. Sleison, William L.
160 Clark Street
118. St. Cyr Jr., Lawrence M.
453 Patterson Hse.

90.00 74-30650 05/02/44 TP YY
So. Deerfield
80.00 74-25341 12/20/43 TP NN
Stow
80.00 74-38907 06/05/50 DP NN
Needham
80.00 74-39083 11/14/44 OP NN
Boston
80.00 74-33022 12/25/16 TP NN
Braintree
80.00 74-26180 05/28/49 TP NN
Lynn
80.00 74-31031 09/24/48 TP YY
Durham
80.00 74-42932 04/09/48 TP YY
Southbridge
80.00 74-31241 05/24/51 TP NN
Salem
80.00 74-29217 02/10/52 TP NN
U. of Mass./Amherst

143

119. Thompson, Kathryn E. 12 Agawam Road	80.00	74-27119	03/20/19	TP	YY
120. Bellew, Joanne M. 5 Appleton Avenue	79.00	74-25132	04/27/30	TP	YY
121. Bergeron, Constance M. East State St.	79.00	74-34824	11/23/23	TP	NN
122. Boyadjian, James A. 68 Morningside Drive	79.00	74-34744	02/16/48	TP	YY
123. Cusick, Ursula 43 Cushing Street	79.00	74-43998	05/09/17	TP	YY
124. Hines, Patrick J. 88 Cherry Street	79.00	74-29749	08/23/30	TP	YY
125. Lewicki, Mitchell F. 777 Lagrange Street	79.00	74-24187	06/03/47	TP	NN
126. Noonan, Dorothy E. 24 Moran Street	79.00	74-24507	08/05/33	OP	NN
127. Picardo, Steven A. 195 Sheridan Avenue	79.00	74-26653	02/08/49	TP	NN
128. Ruderman, Bruce M. 45 Sheridan Dr. Apt. 12	74-24947	12/19/49	TP	NN	

14

129. Shanahan, Eunice P. 8 North Ames Street	79.00	74-30356	12/29/19	OP	NN
130. Hertz, George K. 30 Allston St. Apt. 35	78.00	74-42242	06/18/46	TP	NN
131. Koblinsky, Joseph P. 43 Acton Street	78.00	74-32487	08/02/48	TP	NN
132. Skerry Jr., Richard A. 110 Washington St.	78.00	74-36291	05/14/51	TP	NN
133. Smith, Gisele L. 15 Raleigh Road	78.00	74-36067	02/04/24	TP	NN
134. Boncoddio, Gerard J. 54 Selwyn Road	77.00	74-27907	04/03/52	TP	NN
135. Borrero, Joan 25 Lorraine Terrace	77.00	74-37586	08/06/37	TP	YY
136. Curley, Gertrude A. 373 Main Street	77.00	74-44024	09/24/21	TP	YY
137. Donovan, Marion F. 952 East Broadway	77.00	74-27451	02/18/32	TP	NN
138. Gallagher, George M. 10 Vesey Road	77.00	74-33323	04/01/40	TP	NN

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139. Hartnett Jr., Leo M. 13 Sharon Avenue	77.00 74-42727	12/09/52	TP NN	Auburn
140. Lettich, Mark R. 24 Sunset Road	77.00 74-41408	07/19/51	OP NN	Salem
141. Luatman, Barbara S. 15 Fenwick Place	77.00 74-26194	09/21/33	TP YY	Boston
142. Loda, Peter W. 106 Revere Street	77.00 74-38789	04/05/49	OP NN	Boston
143. Pysz, Paul E. 200 Kelton Street Apt. 5	77.00 74-35049	09/06/50	TP NN	Allston
144. Wholey, James J. 14 Shadow Drive	77.00 74-41130	07/30/52	TP NN	Lowell
145. Carabetta, Michael R. 128 Elm Street	76.00 74-35048	05/23/49	OP NN	Belmont
146. Connolly, David H. 63 Summer Street	76.00 74-28217	10/07/46	TP YY	Saugus
147. Forsythe, Jeffrey P. 644 Adams Street	76.00 74-40145	02/28/51	OP NN	Dorchester
148. Hirshberg, Robert M. 25 Brighton Ave. Apt. 3	76.00 74-39564	10/30/48	TP NN	Allston

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149. Johnson, Chester G. 116 So. Main Street	76.00 74-39018	06/07/47	TP NN	Sharon
150. Kerivan, Rita M. 75 Pilgrim Road	76.00 74-34042	12/20/19	TP YY	Wellesley
151. Waldman, James T. 40 Monastery Road	76.00 74-33368	07/28/50	TP NN	Brighton
152. Corliss, William M. 33 Silver Street	75.00 74-41754	03/13/42	TP NN	Quincy
153. Day, William A. 78 Lake Shore Drive	75.00 74-43097	11/24/49	TP NN	Dracut
154. Frazier, Grant T. 57 Garfield Avenue	75.00 74-24815	05/16/47	OP NN	Weymouth
155. Jamilkowski, Michael L. 15 Peckham Street	75.00 74-28252	04/17/48	OP NN	New Bedford
156. Kelley Jr., Francis M. 66 William Street	75.00 74-30929	10/30/47	TP NN	Walpole
157. Lotti, John J. 102 Sachem Street	75.00 74-44021	01/09/43	TP YY	Wollaston
158. Malley, Kevin H. 476 Beacon Street	75.00 74-42352	06/25/49	TP YY	Boston

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159. McCrann, Eunice R. 6 Laban Pratt Road	75.00 74-29751 04/17/16 TP YY	
160. Orr, Daniel J. 34 Lindenwood Road	75.00 74-21386 11/05/46 OP NN	
161. Scaglione Jr., Peter T. 16 Clancy Street	75.00 74-43820 07/28/46 OP YY	
162. Tomlinson, David P. 218 Lakeshore Dr. Apt. 3	75.00 74-43412 02/16/43 OP NN	
163. Decker, John F. 35 Woodland Road	74.00 74-38018 06/15/43 TP YY	
164. Krusiewski, Barbara A. 25 Franklin Street	74.00 74-30166 08/15/38 TP NN	148
165. Mazzaferro, Linda A. 62 Castle Road	74.00 74-38664 07/06/49 OP NN	
166. Morgan, Virginia L. 114 Swan Street	74.00 74-37050 11/07/25 TP NN	
167. O'Malley, William F. 44 Humphreys Street	74.00 74-34675 03/13/44 TP YY	
168. Reardon, Joseph J. 23 Partridge Avenue	74.00 74-35668 02/09/41 TP NN	

169. Ruggiero, Wayne A. 37 Poole Street	74.00 74-33705 01/27/53 TP YY	
170. McClure, John S. 20 Spalding Street	73.00 74-43222 03/10/49 TP YY	
171. Milano, Arthur H. 10 California Park	73.00 74-42690 02/16/39 OP NN	
172. Schwalm, Janet M. 3 Concord Square	73.00 74-38688 03/21/49 TP YY	
173. Zazopoulos, Andrew A. 5 Downing Avenue	73.00 74-20737 10/14/50 TP YY	
174. Lutz, Dale A. 62 Carey Ave. Apt. 4	72.00 74-27392 09/14/49 TP YY	149
175. Neilo, Roger B. 39 Myrtle Street	72.00 74-43659 11/16/49 TP YY	
176. Rosenberg, Ellen B. 44 Atherton Road	72.00 74-38019 11/01/52 TP NN	

END OF REPORT

EXHIBIT 8.

Administrative Assistant

No. Denoting Rank on List	Name of Veteran	Discharge Date	Military Branch
1	Malloy, Charles H.	Sept. 1945	Army
2	Incrovato, James D.	Feb. 28, 1974	Air Force
3	Rowland, Joseph M.	no military info available	
4	Higgins, Richard D.	no military info available	
5	Linehan, Leo M.	May 4, 1955	Marine Corps
6	Finn, Henry L., Jr.		Army
7	Lynch, Kalman J.	April 1953	Army
8	McCarthy, Joseph M.		
9	Brown, Maurice C.	Nov. 22, 1945	Army
10	Kelly, Thomas F.	March 31, 1946	Army
11	Morse, Robert W.	Nov. 14, 1945	Army
12	Natola, Generoso J.	Nov. 16, 1945	Army
13	Collins, James R.	March 24, 1946	Army
14	Smith, Albert W.	Feb. 20, 1973	Air Force
15	Stundze, Ronald F.		Navy
16	Gondelman, Morton N.	March 4, 1946	Army
17	Swain, Francis J.	no military info available	
18	Casella, Natal J.	July 13, 1945	Army
19	Rooney, Harold H.	no military info available	
20	Callagy, Thomas A.	Feb. 28, 1974	Army
21	Harrington, Joseph P.	Feb. 26, 1946	Navy
22	Kerig, John A.	Dec. 31, 1966	Air Force
23	Murphy, Jeremiah V.	April 3, 1946	Army
24	Vito, Henry J.	March 4, 1948	Army
25	Kessler, Simon M.	Jan. 11, 1946	Army
26	Slamin, Joseph W.	Feb. 1956	Marine Corps
27	Campbell, Eugene J.	Aug. 24, 1956	Army
28	Cawley, Joseph P., Jr.	March 30, 1972	Army
29	Hartwell, Ivan G.	April 30, 1953	Army

No. Denoting Rank on List	Name of Veteran	Discharge Date	Military Branch
30	McCarney, Thomas J.	no military info available	
31	Armstrong, Albert E., Jr.	June 9, 1968	Army
32	King, Albert W.	June 13, 1945	Army
33	Latremouille, Robert J.	Oct. 1963	Army
34	Grublin, Alex R.	Aug. 5, 1945	Army
35	Hurley, John P.	Feb. 22, 1972	Army
36	Jaeger, Robert C.	Sept. 1969	Army
37	Kovacs, Henry E.	Nov. 24, 1945	Army
38	Leavy, Gerald B.	Dec. 5, 1967	Army
39	Cagney, Maurice J.	no military info available	
40	Gilday, John A.	Oct. 18, 1971	Marine Corps
41	Hogan, Harry V.	June 29, 1957	Army
42	Martorano, Nicholas B.	Dec. 1970	Army
43	Oleary, John T.	Aug. 20, 1962	Air Force
44	Prager, Bruce R.	Feb. 18, 1972	Army
45	Sherman, May F.	no military info available	
46	Sullivan, Richard J.	Oct. 1, 1970	Navy
47	O'Donnell, Dennis M.	April 15, 1959	Marine Corps
48	Philbrick, Bruce H.	Aug. 31, 1973	Navy
49	Recko, William R.	Oct. 1955	Navy
50	Ernst, David R.	Feb. 11, 1971	Army
51	Leacock, William R.	no military info available	
52	Murstein, Irving	no military info available	
53	Scull, Edward T., Jr.	July 19, 1967	Army
54	Collins, William J.	Nov. 28, 1969	Army
55	Demerritt, Roger S.	March 26, 1970	Army
56	Hart, Robert E.	Dec. 3, 1971	Army
57	Kelly, John P.	July 22, 1970	Army
58	Philbrick, Donald M.	Dec. 20, 1972	Navy
59	Drever, Robert I.	Jan. 14, 1946	Army
60	Codinha, Paul P.	July 8, 1960	Army
61	Crisafulli, Anthony P.	March 22, 1972	Army
62	Phillips, Edward A.	Sept. 3, 1964	Army
63	Ruddy, Richard A.	Jan. 17, 1969	Army
64	Seroll, William G.	May 1972	Army

EXHIBIT 9.

DIVISION OF CIVIL SERVICE

Eligible List

ESTABLISHED BY DIRECTOR OF CIVIL SERVICE

October 25, 1974

Counsel I

State Service

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Examination held 05/31/74

16 Women — 173 Men Examined

13 Women — 144 Men Eligible

1. Brennan, James A. 30 Sutherland Street	D.V. 94.00 74-26250	12/18/43	TP N
2. Mullonney, Henry G. 55 Elmwood Park	D.V. 84.00 74-00162	04/06/12	OP N
3. Sisk, Vincent E. 192 Highland St.	D.V. 84.00 74-41629	11/10/30	TP Y

4. Seifert, Francis T. 219 Worcester Road	D.V. 82.00 74-06955	10/22/21	OP N
5. Salt, Albert E. 198 Campbell Avenue	D.V. 82.00 74-07895	10/27/22	TP N
6. Brett, Thomas A. 54 Yale Street	D.V. 82.00 74-20706	04/19/14	TP Y
7. McLaughlin, John L. 91 Longfellow Road	D.V. 82.00 74-24420	04/24/19	OP N
8. Burrill, John B. 139 Church Street	Vet. 94.00 73-63796	11/14/43	TP Y
9. Bader, Benedict 75 St. Alphonsus St.	Vet. 92.00 74-02449	07/29/26	TP Y
10. Raitanen, Kauko K. 30 Highland Avenue	Boston		
11. Latrenoville, Robert J. 67 Highland Avenue	Vet. 92.00 74-06422	05/26/23	OP N
12. Eastman, Frank B. 1179 Boylston Street	Lowell		
13. Mueller Jr., William C. 12 Ledgewood Drive	Vet. 90.00 73-61576	11/16/42	TP Y
	Cambridge		
	Vet. 90.00 74-06186	10/17/44	OP Y
	Boston		
	Vet. 89.00 73-65395	11/19/30	TP Y
	Danvers		

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14. Cassavant Jr., Robert J. 90 Pleasant Street	Vet. 89.00	74-03188	01/02/37	OP	Y
15. Menahan, Brian T. 82 Middlesex Road	Vet. 87.00	74-00163	06/24/39	TP	N
16. Prior, George T. 25 Candlewood Lane	Vet. 87.00	74-14425	01/31/36	OP	Y
17. Bailey, Edward J. 239 Cypress Street	Vet. 87.00	74-24041	09/17/44	TP	N
18. Haggard, John W. 5110 Washington St.	Vet. 84.00	74-06283	06/27/12	OP	N
19. Pleshaw, Robert J. 148 State Street	Vet. 84.00	74-13593	07/28/33	TP	Y
20. Kozloski, William A. 16 Highland Place	Vet. 82.00	73-65373	07/09/18	TP	Y
21. Doyle Jr., James C. 27 Cherokee Road	Vet. 82.00	74-00992	03/23/33	TP	N
22. Daly Jr., John F. 114 Brooks Street	Vet. 82.00	74-01457	12/01/12	TP	Y
23. Dooley, Leo J. 26 Goodman Road	Vet. 82.00	74-01459	12/24/20	TP	N

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24. Vito, Henry J. 63 Norfolk Street	Vet. 82.00	74-01516	05/01/28	TP	Y
25. Westwater, Donald W. 19 Englewood Road	Vet. 82.00	74-03654	08/14/25	OP	N
26. Dillon, William W. P.O. Box 182	Vet. 82.00	74-04282	06/29/28	TP	Y
27. Bent, George F. 2 Hawthorne Place	Vet. 82.00	74-07260	03/06/21	OP	N
28. Hicks, Arthur W. 23 Hoover Street	Vet. 82.00	74-07985	11/29/30	TP	Y
29. Kalbross Jr., Seth M. 39 Bolton Road	Vet. 82.00	74-09175	07/26/25	OP	N
30. Sisk, John F. 24 Beechnut Circle	Vet. 82.00	74-09235	04/25/32	TP	N
31. Camann, Milton H. 4 Amelia Avenue	Vet. 82.00	74-09735	01/26/19	TP	Y
32. Lewis, Harvey G. 15 Hemlock Terrace	Vet. 82.00	74-11868	05/30/43	OP	N
33. Hillery, Thomas R. 66 Willow Road	Vet. 82.00	74-11983	03/13/28	TP	Y

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34. Cieri, Joseph A. 32 Garrison Avenue	Vet. 82.00 74-12802	09/13/09	OP	N
35. Myers, Wallace W. 78½ Elm Street	Vet. 82.00 74-13511	11/21/29	TP	Y
36. Crowley, Robert F. 71 Millis Road	Vet. 82.00 74-13557	10/27/18	OP	Y
37. Kelley, James W. 34 Norton Road	Vet. 82.00 74-14221	03/03/26	OP	Y
38. Pickett, Alfred J. 19 Hillcrest Road	Vet. 82.00 74-14419	01/03/29	TP	Y
39. McCarthy, William A. 8 Academy Road	Vet. 82.00 74-14424	09/28/32	OP	Y
40. Kearney, Henry F. 659 Hyde Park Ave.	Vet. 82.00 74-14442	12/02/25	OP	N
41. Shaw, Albert V. 33 Emerson Road	Vet. 82.00 74-14919	07/29/30	TP	Y
42. Lyons Jr., Lawrence N. 20 Eisenhower Road	Vet. 82.00 74-17336	04/11/14	OP	N
43. Wright, John N. 81 Argilla Road	Vet. 82.00 74-18514	10/21/23	TP	Y

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44. Ryan, Michael J. 19 Edward Avenue	Vet. 82.00 74-19360	04/11/15	TP	Y
45. Arenella, Nicholas P. 20 Larchmont Avenue	Vet. 82.00 74-24090	11/28/22	TP	N
46. Long Jr., James J. 25A Totman Drive	Vet. 82.00 74-26098	12/17/37	TP	Y
47. Gledhill Jr., John A. 66 Sierra Road	Vet. 82.00 74-26768	08/05/31	TP	Y
48. Lee, Melvin F. 653 Concord Avenue	Vet. 82.00 74-27582	06/25/25	TP	Y
49. Donovan, John J. 17 Green Street	Vet. 82.00 74-27949	11/14/22	OP	N
50. Mullins, Patrick J. 36 Avalon Road	Vet. 82.00 74-30969	03/17/18	OP	N
51. Finnegan, James W. 11 Pomeroy Street	Vet. 82.00 74-32121	09/30/21	OP	N
52. Donohue, David A. 236 Lake Avenue	Vet. 82.00 74-40112	03/22/23	OP	N
53. Censullo, Alfred 290 Meridian Street	Vet. 82.00 74-41012	11/01/25	TP	N

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54. Gillen, Fred E.
42 Richland Avenue
55. Mahoney, Paul F.
93 Crest Avenue
56. Demarco, Anthony J.
61 Aspen Road
57. Anthony, Carol A.
123 Sewall Avenue
58. Brook, James
329 Harvard Street
59. Hare, Brendan M.
26 Indian Hill Road
60. Larkin, James J.
54 Bluff Road
61. Rosenfield, Carl F.
92 Harnden Avenue
62. Portnoy, Michael J.
10E Austin Court
63. Kouri, Kevin W.
36 Mossdale Road

Vet.	82.00	74-41017	12/28/08	TP	Y
Wellesley					
Vet.	82.00	74-41290	11/18/38	TP	Y
Winthrop					
Vet.	80.00	74-06135	12/05/44	TP	Y
Swampscott					
	94.00	74-02057	05/18/46	TP	N
Brookline					
	94.00	74-03354	12/01/46	OP	N
Cambridge					
	94.00	74-04549	10/07/45	TP	Y
Arlington					
	94.00	74-05879	11/19/38	TP	N
No. Weymouth					
	94.00	74-05880	02/22/47	TP	N
Watertown					
	94.00	74-09249	05/12/47	TP	Y
Saugus					
	94.00	74-10760	07/09/47	OP	Y
Jamaica Plain					

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64. Sherry, Paul J.
569 Washington Street
65. Smith, William J.
13 Elgin Street
66. Conway, Fredric L.
5477 Sheffield Court
67. Barton, William C.
19 Waltham Street
68. Fine, Norman J.
31 Englewood Avenue
69. McCarthy Jr, Leonard D.
235 B Lothrop Street
70. Luise, Vincent S.
127 Nahant Street
71. O'Brien, John J.
61 Huron Circle
72. Butler, Edward G.
1 Fay Road
73. Smith, Carol G.
39 River Street

	94.00	74-11518	11/01/46	TP	Y
Brighton					
	94.00	74-13442	11/14/47	OP	N
West Roxbury					
	94.00	74-14001	06/12/47	OP	N
Alexandria, Va.					
	94.00	74-14152	06/09/48	OP	NN
Somerville					
	94.00	74-16124	07/18/46	TP	NN
Brookline					
	94.00	74-20800	06/16/41	TP	YY
Beverly					
	94.00	74-24040	01/12/50	TP	YY
Lynn					
	94.00	74-25874	07/22/48	TP	NN
Dorchester					
	94.00	74-28054	05/13/43	TP	YY
Dedham					
	94.00	74-41598	02/14/37	TP	YY
Plymouth					

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74. Ziff, Barry D. 43 Sheridan Drive	94.00	74-53915	08/27/42	TP	YY
75. Kaczynski, Michelle A. 67 Rebecca Road	92.00	74-03480	04/16/67	TP	NN
76. Gittes, Betty A. 11 Warwick Road	92.00	74-03969	07/24/46	TP	YY
77. Itri, Ronald J. 288 Roslindale Ave.	92.00	74-05092	09/25/44	TP	NN
78. Miller, Joel M. 455R Sea Street	92.00	74-06174	01/23/47	OP	NN
79. Asadoorian, Richard J. 57 Morningside Road	92.00	74-07911	05/23/44	OP	NN
80. Cohan, Michael B. 1992 Bennington St.	92.00	74-08637	04/11/47	TP	NN
81. Rossman, Neil P.O. Box 201	92.00	74-08841	05/29/45	OP	YY
82. Levine, Jeffrey A. 142 Hayward Street	92.00	74-09385	06/21/47	OP	NN
83. Pressman, Paul E. 60 Hopkins Street	92.00	74-11826	01/18/48	TP	YY

84. Braga, James A. 17 Merrill Street	92.00	74-11861	04/03/43	TP	YY
85. Whitkin, Steven A. 14 Southmere Road	92.00	74-12339	08/19/46	TP	YY
86. Gollinger, John F. 6227 Garden Circle	92.00	74-14421	04/03/48	OP	NN
87. Barry, William F. 429 Chandler Street	92.00	74-14909	09/13/40	TP	NN
88. Kahalas, Howard W. 6 Beacon Street	92.00	74-14926	06/26/47	TP	YY
89. Shavell, Catherine E. 80 Carroll Street	92.00	74-19934	11/25/46	TP	YY
90. Karas, Melvin A. 60 Franklin Street	92.00	74-26306	04/07/45	OP	N
91. McNulty, William J. 1 Tara Drive	92.00	74-28918	08/20/48	TP	Y
92. Zimmerman, Howard M. 95 Carolina Avenue	92.00	74-30014	07/31/47	OP	N
93. Bernstein, Alan S. 69R Ondine Avenue	92.00	74-33902	07/16/43	TP	Y

94. Noonan, Robert E. 93 Sagamore Avenue	90.00	74-02053	07/06/47	TP	Y
95. Hayes, Richard J. 106 Dorchester St.	90.00	74-03655	08/25/48	OP	Y
96. Anyzeski, Michael C. 1277 Comm. Avenue	90.00	74-04551	12/17/46	TP	Y
97. Kilian, Patricia R. 18 Mason Avenue	90.00	74-05623	03/11/49	OP	N
98. Liesperance, Robert P. 1253 Beacon Street	90.00	74-07656	02/25/46	TP	Y
99. Johnson, Ronald P. 28 Hilltop Street	90.00	74-09297	02/13/36	TP	Y
100. Pauli, Richard A. 55 Queensberry St.	90.00	74-10692	03/25/48	TP	Y
101. McNeil, Alexander H. 57 Beacon Street	90.00	74-10767	01/20/48	TP	N
102. Kesselman, Arthur 169 Chestnut Street	90.00	74-11889	06/22/48	OP	N
103. Goldberg, Chester S. 191 Winthrop Road	90.00	74-13075	06/15/48	OP	N

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104. Bronson, Peter R. 13 Orkney Road	90.00	74-13464	01/20/48	OP	N
105. Lambert, Laurent P. 11 Sullivan Drive	90.00	74-14422	06/21/43	OP	Y
106. O'Flaherty Jr, William J. 50 Pleasant Street	90.00	74-21232	02/16/48	OP	N
107. McLaughlin, James T. 40 Briarches Lane	90.00	74-21396	12/03/42	OP	Y
108. Mandell, Andrew L. 21 Fuller Street	90.00	74-26724	05/05/45	OP	N
109. Knee, Kenneth M. 110 Winchester St.	90.00	74-33586	03/24/48	TP	Y
110. Taylor, Marie C. 700 Third Avenue	90.00	74-34134	03/02/46	OP	N
111. Downey, Jr. John J. 198 Fuller Street	90.00	74-42237	12/11/44	TP	Y
112. Lipofsky, Adele G. 15 Knowles Street	89.00	74-10720	11/25/44	TP	Y
113. Sylvester, Robert E. 15 Memorial Road	89.00	75-35421	12/16/45	T	P

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114. Usdan, Dennis M.
125 Chiswick Road
115. Baker, Carol F.
25 Farmview Avenue
116. Szarkowski, Lester J.
55 Cranmere Lane
117. Oken, Robert T.
84 Colonel Bell Dr.
118. Troy, Richard J.
56 Westover Street
119. Davidson, Howard A.
3 Badger Circle
120. Torto, Richard T.
206 Eastern Avenue
121. Bradley, Craig M.
33 Mountainview Dr.
122. Alexander, Robert N.
226 No. Harvard St.
123. Dellhery III, Patrick
1459 V. F. W. Pkwy.

89.00	74-47176	11/14/46	T P
Brighton			
87.00	74-00529	05/16/46	O P
No. Andover			
87.00	74-04340	09/19/43	T P
Melrose			
87.00	74-04857	02/10/47	O P
Brockton			
87.00	74-04859	09/28/39	O P
Everett			
87.00	74-13339	07/12/45	O P
Milton			
87.00	74-14077	10/25/45	T P
Lynn			
87.00	74-14423	07/21/41	T P
Westwood			
87.00	74-17124	06/14/45	T P
Allston			
87.00	74-24568	12/26/46	T P
West Roxbury			

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124. Gallese, Paul D.
472 Broad Av
125. Kerwin, Mary A.
15 Grant Street
126. Runyan, Harley L.
33 State Street
127. Albright, Birge
441 Shawmut Avenue
128. Fagan, Stephen H.
3 Churchill Road
129. Talbot, Walter A.
116B Pembroke Street
130. McMahon, Ethel
34 Broad Street
131. Barry, David F.
30 Clarendon Terrace
132. Coran, Ruth W.
46 Lincoln Street
133. Leonard, Daniel J.
97 50, Beaudin St.

87.00	74-28601	05/14/46	O P
Cambridge			
84.00	74-00803	03/14/47	O P
Somerville			
84.00	74-14159	02/25/32	T P
Springfield			
84.00	74-41125	07/01/35	T P
Boston			
82.00	74-00528	08/10/41	T P
Norfolk			
82.00	74-02734	08/27/44	T P
Boston			
82.00	74-04855	02/24/17	O P
Lynn			
82.00	74-05350	08/03/40	T P
Swampscott			
82.00	74-05352	00/00/00	T P
Belmont			
82.00	74-05645	09/15/28	T P
Lawrence			

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134. Barrett, Robert E.
56 Concord Avenue
135. Cox, Jerome W.
131 Ruggles Street
136. Mahanna, George J.
53 State Street
137. Lehane, Michael C.
7 Greentree Lane
138. Mulan, Edward J.
815 Essex Street
139. Polvere, Daniel M.
33 Monument Sq.
140. Redman, Herbert J.
4 Windemore Circle
141. Direnzo, Frank J.
140 Chestnut Street
142. Keach Jr, John A.
855 Foundry Street
143. Leonard, William M.
46 Draper Street

82.00	74-06979	07/09/45	T	P
Milton				
82.00	74-07577	01/16/42	T	P
Westboro				
82.00	74-07906	12/24/14	OP	Y
Boston				
82.00	74-08890	08/09/41	TP	N
Rowley				
82.00	74-09291	03/11/15	OP	N
Lawrence				
82.00	74-09729	02/25/42	TP	Y
Charlestown				
82.00	74-10675	11/28/04	OP	Y
Braintree				
82.00	74-10935	09/03/18	OP	N
No. Attleboro				
82.00	74-11368	10/09/38	TP	Y
South Boston				
82.00	74-11441	02/07/41	TP	Y
Dorchester				

166

144. Scola, Richard J.
14 Cleverdale Road
145. McColough, William F.
95 Douglas Road
146. Smith, Helen A.
91 Faneuil Street
147. Nolan, Robert B.
56 Fifth Avenue
148. Zimanne, Stuart
581 Beaver Pk. Rd.
149. Vaughan, John W.
81 Fremont Avenue
150. Dowcett, John P.
193 Ashcroft Road
151. Burns, James
5 Greentree Lane
152. Connors, William J.
68 Munroe Street
153. Mahoney, James B.
61 Board Street

82.00	74-12694	07/14/42	OP	Y
Newton Hlnds.				
82.00	74-12753	08/09/41	OP	N
Lowell				
82.00	74-12793	01/08/21	TP	Y
Brighton				
82.00	74-13632	12/25/17	TP	Y
Lowell				
82.00	74-13965	10/22/40	OP	Y
Frammingham				
82.00	74-14929	04/03/33	TP	N
Chelsea				
82.00	74-21234	09/12/24	TP	Y
Medford				
82.00	74-21379	05/30/30	TP	N
Revere				
82.00	74-23280	10/13/31	TP	N
Belmont				
82.00	74-39004	11/04/38	TP	Y
Weymouth				

167

154. Anastas, Franklin P. 12 Cable Road	82.00 74-40041 02/25/44 OP Y	North Quincy
155. Kruger, Martin 289 Baynard Drive	82.00 74-40242 02/06/34 OP N	Norwood
156. Jarvis, Robert F. 10 Haskell Street	82.00 74-41280 12/30/25 OP N	Gloucester
157. Hamanoss, John 50 Chestnut St.	82.00 74-42225 02/04/30 TP Y	Charlestown

END OF REPORT

EXHIBIT 10.

Counsel I

No. Denoting Rank on List	Name of Veteran	Discharge Date	Military Branch
1	Brennan, James A.	Aug. 27, 1969	Army
2	Mullonhey, Henry G.		
3	Fisk, Vincent E.	Feb. 1, 1956	Navy
4	Seifert, Francis T.	Feb. 1, 1946	Army
5	Salt, Albert E.	Jan. 15, 1946	Navy
6	Brett, Thomas A.	Nov. 13, 1945	
7	McLaughlin, John L.	Nov. 19, 1945	
8	Burrill, John D.	June, 1970	Marine Corps
9	Daper, Benedict	no application in file	
10	Raitanen, Kauko K.	Feb. 2, 1946	
11	La Tremoville, Robert James	Oct. 4, 1973	Army
12	Eastman, Frank E.	Sept. 8, 1969	Army
13	Mueller, William Gerard, Jr.	Aug. 24, 1954	Air Force
14	Cassavant, Roland J.	Aug. 9, 1958	Army
15	Menahan, Brian T.	Nov. 3, 1964	Army
16	Prior, George T.	Aug. 25, 1958	Army
17	Dailey, Edward J. III	Dec. 31, 1966	Navy
18	Haddad, John H.	Dec. 1945	Army
19	Pleshaw, Robert J.	Feb. 25, 1955	Army
20	Kozloski, William A.	Feb. 1946	Army
21	Doyle, James C., Jr.	Dec. 31, 1959	Marine Corps
22	Daly, John	Jan. 14, 1946	Army
23	Dooley, Leo Joseph	Dec. 13, 1945	Navy
24	Vito, Henry	(WWII)	Army
25	Westwater, Donald M.	Feb. 16, 1946	Army
26	Dillon, William	no military info in file	
27	Bent, George F.	Oct. 21, 1945	Army
28	Hicks, Arthur W.	Nov. 22, 1952	Navy
29	Kalberg, Seth M., Jr.	July 1947	Navy

No. Denoting Rank on List	Name of Veteran	Discharge Date	Military Branch
30	Fisk, John F.	no military info in file	
31	Camann, Milton H.	Oct. 25, 1945	Army
32	Lewis, Harvey G	Jan. 1972	Army
33	Hillery, Thomas H.	Oct. 8, 1947	Army
34	Cieri, Joseph A.	no military info in file	
35	Myers, Wallace H.	Jan. 18, 1957	Army
36	Crowley, Robert F.	Feb. 28, 1947	Navy
37	Kelley, James W.	Aug. 1946	Naval Training School
38	Pickett, Alfred J.	no application in file	
39	McCarthy, William A.	Aug. 22, 1956	Army
40	Kearney, Henry F.	no military info in file	
41	Shaw, Albert V.	Sept. 13, 1957	Navy
42	Lyons, Lawrence W.	Dec. 1945	Navy
43	Wright, John W.	no military info in file	
44	Ryan, Michael J.	Feb. 3, 1946	Navy
45	Arenella, Nicholas P.	Jan. 15, 1946	Navy
46	Long, James J.	April 9, 1959	Army
47	Glenhill, John A.	1955	Army
48	Lee, Melvin F.	June 1946	Marine Corps
49	Donovan, John J.	Jan. 23, 1946	Army
50	Mullins, Patrick J.	no military info in file	
51	Finnegan, James	Sept. 15, 1945	Air Force
52	Donohue, David A.	no application in file	
53	Censullo, Alfred	Oct. 8, 1945	Army
54	Gillen, Fred E.	Sept. 17, 1942	Army
55	Mahoney, Paul F.	2 years	Coast Guard
56	DeMarco, Anthony J.	no military info in file	

EXHIBIT 11.

LAST FILING DATE: OCTOBER 2, 1974 OPEN CONTINUOUS

UNASSEMBLED EXAMINATION

Counsel 1 State Service

Wishing Disabled Veterans' Preference

1. Victor R. Davidson, 173 Rhoda St., Quincy	92.00
2. Peter D. Hoban, 6 Pleasant Ave., Somerville	90.00
3. William C. Bowen, 667 Main St., Worcester	82.00
4. Leonard A. Hanlon, 107 Harvard St., Medford	82.00

Wishing Veterans' Preference

5. John R. O'Malley, 69 Adams St., Norwood	94.00
6. William G. Billingham, 21 Archer Ave., Pembroke	92.00
7. William L. Cerruti, 490 Commonwealth Ave., Boston	92.00
8. Arthur I. Missan, 18 Erie St., Swampscott	92.00
9. John T. Robinson, 39 Sunset Rd., Arlington	92.00
10. David A. White, 29 Eliot St., Jamaica Plain	92.00
11. Frederick G. Feeley, Jr., 35 Waverly Ave., Everett	89.00
12. David S. Rosen, 12 Indian Head Heights, Framingham	89.00
13. Robert P. Doherty, 80 Pine Ridge Rd., Medford	84.00
14. Luciano Bartolomeo, 93 Boardman St., East Boston	82.00
15. John M. Collins, 17 South St., Medfield	82.00
16. Thomas X. Cotter, 22 Cowden St., Worcester	82.00
17. Melvin L. Dworet, 38 Clinton Rd., Brookline	82.00
18. Samuel B. Mesnick, 19 Oak Terrace, Malden	82.00

19. Robert B. McCormack, 106 Main St., Hingham 82.00
 20. Barnard Stonberg, 142 Grant Ave., Newton 82.00

Non Veterans

21. Arnold E. Cohen, 54 Royal St., Allston 94.00
 22. Robert A. Civiello, 43 Charter St., Boston 94.00
 23. Peter M. Gerard, 64 Revere St., Boston 94.00
 24. Kevin P. Grady, 27 Cambridge St., Worcester 94.00
 25. Gerald P. Hendrick, 283 High St., Medford 94.00
 26. Charles E. Miracle, 86 Buckingham St., Cambridge 94.00
 27. Edward J. Collins, 131 Southwick St., Agawam 92.00
 28. Stacy Cromidas, 27 Boyce St., Auburn 92.00
 29. Judith N. Dilday, 173 Everett St., Allston 92.00
 30. Nancy L. Elam, 882 Broadway, Somerville 92.00
 31. Ruth A. Gass, 20 Francis St., Brookline 92.00
 32. Bradley H. Geller, 62 Pleasant St., Brookline 92.00
 33. Roberta L. Golick, 1270 Beacon St., Brookline 92.00
 34. Joel H. Goober, 19 Gannett Terrace, Sharon 92.00
 35. Paul H. Granger, 393 Weston Rd., Wellesley 92.00
 36. David J. Hipwood, 75 Griggs Rd., Brookline 92.00
 37. Steven L. Kornstein, 61 Strathmore Rd., Brighton 92.00
 38. John J. Lahey, 235 Commonwealth Ave., Boston 92.00
 39. Michael W. Monk, 109 Winchester St., Brookline 92.00
 40. William J. Mostyn, 16 Westwood Rd., Somerville 92.00
 41. George T. O'Brine, 3 Locust St., Salem 92.00
 42. Edward J. Quinlan, 46 Leamington Rd., Brighton 92.00
 43. John E. Sabino, 314 West 77 St., New York, N.Y. 92.00

44. Robert A. Scandurra, 308 Commonwealth Ave., Boston 92.00
 45. Terence E. Scanlon, 35 Wallingford Rd., Boston 92.00
 46. Rhoda E. Schneider, 80 Francis St., Brookline 92.00
 47. Chris O. Stern, 10 Chauncy St., Cambridge 92.00
 48. Naomi R. Stonberg, 105 Valentine Rd., Milton 92.00
 49. James W. Stone, 2031 Commonwealth Ave., Brighton 92.00
 50. Gerald W. Tutor, 20 Ripley Terrace, Newton Centre 92.00
 51. Arnold R. Wallenstein, 24 Prescott St., Cambridge 92.00
 52. Foster Furcolo Jr., 6 Brooks Rd., Wayland 90.00
 53. Sandra M. Garrison, 288 Chestnut Hill Ave., Brighton 90.00
 54. Peter F. Keenan, Jr. 33A Alvarado Ave., Worcester 90.00
 55. Kevin J. McGinty, 44 Bittern Rd., Quincy 90.00
 56. Louis H. Steinhardt, 500 Revere Beach Boulevard, Revere 90.00
 57. Joelle D'Esti Bogdasarian, Rm. 1604 Labor Relation Comm., 100 Cambridge St., Boston 89.00
 58. Martha J. Koster, 37 Ashmont Rd., Waban 89.00
 59. Mary A. Gilleece, 8 Whittier Place, Boston 87.00
 60. Daniel J. Landau, 1874 Beacon St., Brookline 87.00
 61. Donald Moffat, 64 Maynard St., Arlington 87.00
 62. James A. Brett, 55 Blithewood Ave., Worcester 87.00
 63. Timothy F. Murphy, 587 Weld St., West Roxbury 87.00
 64. Margaret A. Cavanaugh, 309 Southwick Rd., Westfield 82.00
 65. Hartley C. Cutter, 45 Alberta Road, Brookline 82.00
 66. Frederick L. Fishman, 1970 New Rodgers Rd., Levittown Penn. 82.00
 67. June H. Gorman, 206 Summer St., Malden 82.00
 68. John P. Zelonis, Jr., P.O. Box 362, Cambridge 82.00

EXHIBIT 12.

Summary of Official Service — Ten Year Comparative Table

PERMANENT APPOINTMENTS								
Year	Males			Females				Total
	Disabled Veterans	Veterans	Non-Veterans	Disabled Veterans	Veterans	Gold Star	Non-Veterans	
1973	119	1,240	1,130	5	31	7	2,016	4,548
1972	214	1,754	1,356	9	28	9	2,292	5,662
1971	155	1,353	1,255	22	26	6	2,005	4,822
1970	133	1,376	1,221	31	26	7	2,009	4,803
1969	181	1,297	1,290	16	25	7	1,867	4,683
1968	289	1,425	1,395	3	54	3	2,934	6,103
1967	218	1,000	1,200	2	23	2	1,716	4,161
1966	191	817	1,416	4	16	1	1,662	3,837
1965	240	825	1,101	7	18	3	1,665	3,859
1964	401	1,248	1,224	2	27	2	1,623	4,527

[Exhibits 13-81 are not reproduced by agreement of counsel.]

EXHIBIT 82.

UNITED STATES DISTRICT COURT
for the
DISTRICT OF MASSACHUSETTS.

HELEN B. FEENEY,
PLAINTIFF

v.

CIVIL ACTION
No. 75-1991-T

THE COMMONWEALTH OF MASSACHU-
SETTS, ET AL.,
DEFENDANTS

Affidavit of Helen B. Feeney.

I, Helen B. Feeney, being duly sworn, depose and say:

1. I am Helen B. Feeney and am the plaintiff in the above-entitled action.

2. I reside at 1826 Lakeview Avenue, Dracut, Massachusetts.

3. I am 53 years old.

4. I was married on March 3, 1951 and have two children, ages 23 and 22 and a stepson age 27.

5. My educational background is as follows:

(a) I received my high school diploma from Dracut High School in 1938.

(b) I subsequently have taken a number of courses including the following:

(i) a 20-credit accounting course at Bradshaw College in Lowell for which I was awarded a diploma in 1940.

(ii) a five-credit accounting course at Burdett College for which I received a certificate in 1941.

(iii) a two-credit history of economics course at Boston University for which I received a certificate in 1944.

(iv) an eight-credit course at the University of Massachusetts in Civil Defense Management for which I was awarded a certificate in 1967.

6. I am presently unemployed and have been unemployed since March 28, 1975, when I was laid off by the Commonwealth of Massachusetts from a permanent position in the official service of the Commonwealth classified as Federal Funds and Personnel Coordinator, Civil Defense Agency, State Division of Civil Defense.

7. My employment experience is as follows:

(a) From 3/15/48 through 8/29/52 I was employed as a Clerk for the New Haven Railroad.

(b) From 9/1/52 through 12/31/55 I was employed as General Manager at the Feeney Trucking Company, Lowell, Massachusetts.

(c) From 4/19/56 through 10/24/61 I was employed as an Administrative Assistant for Transport Clearings of New England, Inc., in Lowell,

(d) From 1/17/62 through 4/1/63 I was employed as an Administrative Assistant at Malden Limited in Lawrence, Massachusetts.

(e) From 4/24/63 through 8/13/67 I was employed by the Commonwealth of Massachusetts, Civil Defense Agency as a Senior Clerk Stenographer.

(f) From 8/13/67 through March 28, 1975, I was employed as Federal Funds and Personnel Coordinator for the Commonwealth of Massachusetts, Civil Defense Agency.

8. To the best of my recollection, the Civil Service examinations in addition to Administrative Assistant and Head Administrative Assistant at the Solomon Mental Health Center that I have passed and the circumstances relating to them are as follows:

(a) I passed an examination for Senior Clerk Stenographer sometime in 1962. This was the position to which I received a permanent appointment by the Commonwealth of Massachusetts on April 24, 1963.

(b) I passed a promotional examination held on April 2, 1966 for the position of Federal Funds and Personnel Coordinator, Civil Defense Agency with a score of 76.16. Two male veterans who received a two point promotional preference were originally appointed to fill two vacancies. Later one of these two appointees were promoted to another position, and I was offered and accepted the position. This is the job from which I was laid off on March 28, 1975.

(c) I passed a promotional examination held on April 15, 1967 for the position of Assistant Training Officer, Civil Defense Agency, State Division of Civil Service with a score of 74.68.

(d) I passed an open competitive examination held on February 6, 1971 for the position of Assistant Secretary, Board of Dental Examiners with a score of 86.68.

(e) I passed a promotional examination held on January 15, 1972 for the position of Area Director, State Division of Civil Defense (Grade 17) with a score of 84.24.

(f) I passed an open competitive examination held about February 22, 1972 for the position of Administrative Officer, Civil Defense Agency, State Division of Civil Defense (Grade 17). I do not recall my score. I was informed after the marks were released but before a list was established that the position was abolished.

(g) I passed an open competitive examination for the position of Assistant to the Director, Civil Defense Agency, State Division of Civil Defense with a score of 81.40.

9. On about February 24, 1973, I took the competitive examination for appointment to the permanent position of Head Administrative Assistant at the Solomon Mental Health Center ("Head Administrative Assistant"); I was found to qualify and achieved a score of 92.32, the third highest score; I was ranked fourteenth on the Head Administrative Assistant Eligible List established from that examination; in establishing the Head Administrative Assistant Eligible List, the Director, pursuant to the Veterans' Preference Statute, placed the names of twelve male veterans ahead of my name. Of these twelve veterans, eleven achieved lower scores on the examination. If the Head Administrative Assistant List had been established on the basis of examination scores, I would have been ranked third on the Head Administrative Assistant List and would have been certified for appointment. My name was not certified to the appointing authority for consideration for Head Administrative Assistant because of the application of the Veterans' Preference Statute.

10. At the time of the examination and at all times thereafter, including the present, I was interested in and remain interested in and would have considered accepting the position of Head Administrative Assistant.

11. At the time of the examination for the position of Head Administrative Assistant, I knew and understood that the Veterans' Preference Statute would be applied by the Director of Civil Service in establishing the Head Administrative Assistant Eligible List.

12. On about May 18, 1974, I took the competitive examination for appointment to permanent positions classified as Administrative Assistant. I was found to qualify and achieved a score of 87 and was ranked seventieth on the Administrative Assistant Eligible List established by the Director in April, 1975. In establishing that eligible list, the Director, pursuant to the Veterans' Preference Statute, placed ahead of my name the names of all veterans of whom about fifty of these veterans achieved lower grades on the examination. If the Veterans' Preference Statute had not been applied by the Director in establishing the Administrative Assistant Eligible List and if the Administrative Assistant Eligible List had been established on the basis of examination scores alone, I would have been ranked seventeenth on the Administrative Assistant Eligible List.

13. At the time of the examination for positions classified Administrative Assistant and at all times thereafter, including the present, I was interested in and remain interested in and would consider accepting a permanent position classified Administrative Assistant.

14. At the time of the examination for positions classified Administrative Assistant, I knew and understood that the Veterans' Preference Statute would be applied by the Director in establishing the Administrative Assistant Eligible List.

15. I understand that as of April 23, 1975, there were requisitions for seven permanent positions classified Administrative Assistant and that as of May 13, 1975, the Director began certifying names from the Administrative Assistant Eligible List

to appointing authorities for consideration to fill the requisitions for positions classified Administrative Assistant.

16. I understand that, as a result of my being ranked seventieth on the Administrative Assistant Eligible List rather than seventeenth, my name will not be certified for many job openings classified as Administrative Assistant and the chances of my name ever being certified to any appointing authority are significantly reduced.

17. Over the course of the last ten years, I have from time to time reviewed the Civil Service Notices of examinations, and I did not apply and take the examinations for many positions in which I was interested because I felt to apply and compete for these positions would be futile in light of the certain application of the Veterans' Preference Statute. I continue to be interested in Civil Service positions and desire to resume my career in the official service of the Commonwealth but I continue to feel that application and competition is likely to be futile in light of the certain application of the Veterans' Preference Statute.

18. Although I never made formal application to join the military service, in the early years of World War II I did inquire about programs for women in both the Navy and the Army. I was informed by the recruiters that programs for women were very limited and that there were more rigorous physical requirements for females as opposed to males. I was also informed that for females as opposed to males there had to be a particular opening at the time of enlistment for the particular skill of females or a female would not be enlisted. I was over 18 years of age at the time, but I was also informed that, since I was a female, I had to obtain parental consent. My mother (my father was deceased) refused to give me the required permission, stating to me that the general reputation of the type of female who joined the military was not good.

19. My experiences with the application of the Veterans' Preference Statute from 1963 through the present and particularly in applying for positions as Head Administrative Assistant and Administrative Assistant has caused me distress. It is frustrating and distressful to know that for most desirable positions in the official service for which I have competed or may compete with male applicants, I am denied the opportunity to compete based solely on relative ability and qualifications as reflected in the grades from the competitive examinations because I will always be ranked below veterans with lower examination grades.

HELEN B. FEENEY

[Jurat-omitted in printing.]

**United States District Court
for the District of Massachusetts.**

HELEN B. FEENEY,
Plaintiff

v.

CIVIL ACTION
No. 75-1991-T

THE COMMONWEALTH OF MASSA-
CHUSETTS, et al.,
Defendants

Affidavit.

I, Edward W. Powers, being duly sworn, depose and say:

1. I am Edward W. Powers and I reside at 7 Midland Circle, North Andover, Massachusetts 01810.

2. I held the position as Director of Civil Service, Division of Civil Service (the "Division"), the Commonwealth of Massachusetts from August 14, 1973 through June 30, 1975 and am the Edward W. Powers named in the complaints filed in *Anthony, et al., v. Commonwealth, et al.*, Civil Action No. 74-5061-T (D. Mass.) ("Anthony") and *Feeney v. Commonwealth, et al.*, Civil Action No. 75-1991-T (D. Mass.) ("Feeney"). Since my position as Director of Civil Service terminated on June 30, 1975, I am presently no longer a defendant in *Feeney* and am an individual defendant in *Anthony*.

3. During the second half of the fiscal year ending June 30, 1974, the Division implemented a new policy of giving "banding" examinations. This "banding" policy consists of giving a single, state-wide examination for each entry level classification rather than separate departmental examinations for the same classification.

4. At the same time that the above described "banding" policy was introduced, the Division changed the type of written examination given. Prior to "banding", Civil Service examinations traditionally tested an applicant's specific knowledge about the position for which he or she was applying. While such knowledge is essential for many jobs, other factors, such as, attitude, aptitude, and interpersonal skills are often better indicators of future job performance. The "banded" examinations have been designed to test for these more general job-related abilities rather than just specific knowledge about a particular job.

5. Prior to "banding", commonly only a small number of applicants passed an examination, and eligible lists were often quite short. True copies of eligible lists resulting from Civil Service examinations given for positions in one department established prior to "banding" are attached hereto and marked A, B, and C. Primarily as a result of state-wide "banded" examinations, much greater numbers of applicants (often hundreds) pass the examinations and eligible lists have become quite long. True copies of eligible lists resulting from "banded", state-wide examinations are the Counsel I Eligible List and the Administrative Assistant Eligible List attached hereto and marked D and E.

6. Prior to "banding", departments of the Commonwealth were frequently able to persuade the Division to tailor departmental entry examinations with such specific questions about the particular job that only those provisional appointees (often females) who were presently working in the job would pass the

examination or to tailor minimum entrance requirements on the basis of the background of the provisional so that others didn't even qualify to take the examination. These techniques would, in some cases, defeat the effect of the Veterans' Preference Statute although in numerous cases female eligibles were not certified for appointment because of the preference granted to veterans who had lower grades on the examination. Now that the Division is giving these banded examinations on a state-wide basis for a much larger number of jobs in the same classification, the continued application of the "absolute" veterans' preference will substantially diminish the opportunity for employment of women in positions for which open competitive examinations are given and for which men and women compete. Women will continue to be employed primarily in the relatively low-paying entry-level clerical positions for which men traditionally do not apply. However for the relatively high paying Civil Service positions, such as programmers, planners, psychologists, doctors, administrative assistants, head administrative assistants, etc., the continued use of the Veterans' Preference Statute will result in few, in any, female eligibles being considered and appointed to such positions.

7. The status of being a veteran, in and of itself, for purposes of applying the Veterans' Preference Statute is not a job-related criterion that is predictive of ability to perform in a job or of future job performance. The grade given to an applicant on a civil service examination is a function of his or her score on the written test and credit for relevant job-related training and experience. In the case of an "unassembled" competitive examination, the grades are determined by analyzing and crediting only job-related training and experience. Therefore, a veteran, who as part of his military service acquired relevant

job-related training and experience, receives credit in his civil service examination grade for such training and experience.

EDWARD W. POWERS

[Jurat omitted in printing.]

Attachment A.

DIVISION OF CIVIL SERVICE

ELIGIBLE LIST

ESTABLISHED BY DIRECTOR OF CIVIL SERVICE

Principal Programmer

St Dept of Corp & Tax

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EXAMINATION HELD 02/02/74

3 WOMEN 15 MEN EXAMINED

3 WOMEN 6 MEN ELIGIBLE

1. Campbell, Jr, Lawrence J. 5 Wilma Court	Vet. 84.00 73-64987	09/04/37	TP YY
2. Efstathiou, Andrew E. 33 Justin Road	Vet. 83.00 73-66506	05/25/31	TP YY

3. White, Duane 161 Perham Street	Vet. 82.00 73-61820	06/23/38	TP YY
4. DeBeneditto, Doris E. 135 Larkin Street	84.00 73-61552	10/06/46	TP YY
5. Garbino, Joseph T. 2 Arcadia Street	83.00 73-61555	10/09/40	TP YY
6. Sanders, Jeanne M. 234 Fairmount Ave.	83.00 73-63029	09/01/34	TP YY
7. Gelinas, Donald L. 2 Wildwood Street	81.00 74-02075	04/24/34	TP YY
8. Hurley, Judith M. 24 Elm Place	80.00 73-61554	12/10/46	TP YY
9. Lovell, Darryl B. 50 Heritage Lane	76.00 73-66510	07/15/45	TP YY

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END OF REPORT

Attachment B.

ELIGIBLE LIST

ESTABLISHED BY DIRECTOR OF CIVIL SERVICE

August 24, 1973

Head Adim Assistant

Men hlth dr hcs men h c

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EXAMINATION HELD 02/24/73

7 WOMEN 25 MEN EXAMINED

4 WOMEN 12 MEN ELIGIBLE

1. Irvin, Joseph F. 77 Hamilton Street	D.V. 77.40 73-05171	11/17/25	TP YY
	Malden		08/24/73
2. Mangan, Edward P, 14 Belrose Avenue	Vet. 93.28 73-01921	07/06/29	TP YY
	Lowell		08/24/73

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3. Rodney, Harold 67 Barouche Drive	Vet. 90.20 73-05924	11/26/32	TP YY
	Marshfield		08/24/73
4. Ellerteen, Robert J. 5 Hamilton Road	Vet. 89.04 73-04960	05/28/45	TP YY
	Brookline		08/24/73
5. Spain, Francis J. 11 Wildwood Road	Vet. 88.00 73-01920	03/22/21	TP YY
	Medford		08/24/73
6. Makarewicz, Francis E. 1501 Edward Street	Vet. 83.04 73-04318	11/02/32	TP YY
	Lowell		08/24/73
7. Goode, Francis J. 4 Longspur Road	Vet. 82.60 73-03325	04/20/28	TP YY
	Chelmsford		08/24/73
8. Cagney, Maurice J. 10 Garfield Avenue	Vet. 82.16 73-05190	07/15/36	TP YY
	Beverly		08/24/73
9. Malloy, John B. 292 Pine Street	Vet. 78.24 73-03634	11/13/32	TP YY
	Fall River		08/24/73
10. Semrod, Theodore L. 311 South Street	94.88 73-05484	03/29/38	TP YY
	Carlisle		08/24/73
11. Feeney, Helen B. 1826 Lakeview Ave.	92.32 73-05477	12/09/21	TP YY
	Dracut		08/24/73
12. White, Joan C. 17 Alden Avenue	88.68 73-05715	10/08/30	TP YY
	Hull		08/24/73

13. Belinsky, Ruth 109 Wentworth Ave.	84.12	73-02082	10/01/23	TP	YY
	Lowell				08/24/73
14. Milot, Edmund R. 10 1/2 Waverly St.	83.92	73-02386	05/26/46	TP	YY
	Taunton				08/24/73
15. Chipman, Elizabeth A. 63 Edgewood Road	82.92	73-04137	03/20/32	TP	YY
	Wayland				08/24/73
16. Weinberg, John R.	80.32	73-05196	10/29/45	TP	YY

Attachment C.

ELIGIBLE LIST

ESTABLISHED BY THE DIRECTOR OF CIVIL SERVICE

October 20, 1965

Administrative Assistant
(Massachusetts Historical Commission)
Department of the Secretary of the Commonwealth

Examination held April 24, 1965

9 women, 17 men examined

3 women, 1 man eligible as follows:

1. Richard D. Higgins, 7 Naples Rd., Salem	Dis. Vet.	78.08
2. Ann C. McCauliff, 2 Rollins Place, Boston		80.96
3. Claire R. Ross, 22 Ross Rd., Swampscott		79.00
4. Mary V. Darcy, 112 Decatur St., Arlington		78.08

EXHIBIT 84.

Summary of Official Service — Ten Year Comparative Table

NUMBER PASSING EXAMINATIONS								
Males			Females					Total
Year	Disabled Veterans	Veterans	Non-Veterans	Disabled Veterans	Veterans	Gold Star	Non-Veterans	
1973	143	2,635	3,155	1	92	2	13,494	19,524
1972	247	4,162	4,665	3	91	2	8,089	17,259
1971	188	3,886	3,013	3	146	6	9,062	16,304
1970	113	3,289	2,386	2	107	8	6,698	12,603
1969	284	4,063	2,202	1	94	-	6,186	12,830
1968	265	3,501	2,434	7	134	6	7,609	13,956
1967	309	3,957	3,362	3	165	2	8,476	16,274
1966	400	3,415	2,651	6	165	2	8,777	15,416
1965	335	3,411	3,531	5	148	2	9,825	17,257
1964	492	3,868	3,693	9	139	3	9,025	17,229

[Exhibits 85 — 168 are not reproduced by agreement of counsel.]

United States District Court. District of Massachusetts.

CAROL A. ANTHONY, ET AL.

v.

CIVIL ACTION
No. 74-5061-TTHE COMMONWEALTH OF
MASSACHUSETTS, ET AL.

HELEN B. FEENEY

v.

CIVIL ACTION
No. 75-1991-TTHE COMMONWEALTH OF
MASSACHUSETTS ET AL.

Judgment and Order.

March 29, 1976.

TAURO, D.J.

1. Judgment is entered in favor of the defendant in *Anthony v. Commonwealth*, CA 74-5061-T on grounds of mootness. (Opinion pages 16-23.)

2. Judgment is entered in favor of the Commonwealth of Massachusetts and the Division of Civil Service in *Feeney v. Commonwealth*, CA 75-1991-T, because these defendants are not "persons" within the meaning of 42 U.S.C. § 1983. (Opinion page 2 n. 2.)

3. Judgment is entered in favor of the plaintiff Feeney in No. 75-1991-T, against the Massachusetts Director of Civil

Service and the members of the Massachusetts Civil Service Commission on the grounds that Mass. Gen. Laws ch. 31, § 23 (The Massachusetts Veterans' Preference) is unconstitutional in that it operates to deprive female civil service applicants equal protection of the laws. (Opinion pages 23-37.)

It is ORDERED that:

(a) The Massachusetts Director of Civil Service and the members of the Massachusetts Civil Service Commission are hereby permanently enjoined from utilizing Mass. Gen. Laws ch. 31, § 23 in any future selection of persons to fill civil service positions with the Commonwealth.

(b) This injunction shall have no effect upon the continued status of any individual in a permanent civil service position who holds that position on the date of this injunction.

LEVIN H. CAMPBELL,
Circuit Judge.

JOSEPH L. TAURO,
District Judge.

United States District Court. District of Massachusetts.

CAROL A. ANTHONY, ET AL.

v.

CIVIL ACTION
No. 74-5061-T

THE COMMONWEALTH OF
MASSACHUSETTS, ET AL.

HELEN B. FEENEY

v.

CIVIL ACTION
No. 75-1991-T

THE COMMONWEALTH OF
MASSACHUSETTS, ET AL.

Opinion.

March 29, 1976.

TAURO, *District Judge.* These two actions are brought under 42 U.S.C. § 1983 by four female Massachusetts residents who claim they failed to receive Civil Service appointments with the Commonwealth due to the operation of the Massachusetts Veterans' Preference Statute,¹ Mass. Gen. Laws ch. 31, § 23, which they claim unconstitutionally discriminates against them because of their sex. They now seek to permanently enjoin the continued enforcement of § 23.

Temporary restraining orders, consented to by all parties, were entered in each case by a single judge of this court

¹ See Appendix.

prohibiting the defendants^{*} from making, or preparing to make, recommendations for positions sought by the plaintiffs pending the outcome of this litigation. See 28 U.S.C. § 2284(3). The parties in both actions submitted agreed statements of fact. The cases were consolidated for argument and then submitted for a decision on the merits.

I.

The Massachusetts Civil Service System covers approximately 60% of those employed by the Commonwealth. In the Classified Official Service, the division which includes the positions sought by the plaintiffs, 47,005 appointments (not including promotions) were made during the ten year period between July 1, 1963 through June 30, 1973. Forty-three percent (20,211) of those appointees were women while 57% (26,794)

^{*} Named as defendants in each case are the Commonwealth of Massachusetts; The Division of Civil Service of the Commonwealth of Massachusetts; Edward W. Powers, individually and in his capacity as the Director of Civil Service; Nancy B. Beecher, Wayne A. Healy and Helen C. Mitchell, individually and as members of the Massachusetts Civil Service Commission.

As the defendants correctly point out, neither the Commonwealth of Massachusetts nor the Division of Civil Service are "persons" within the meaning of § 1983 and, therefore, are not proper parties to any lawsuit brought under that section. *Gay Students Organization of University of New Hampshire v. Bonner*, 509 F. 2d 652 (1st Cir. 1974). See *Kenosha v. Bruno*, 412 U.S. 507 (1973); 365 U.S. 167 (1961). Nor have the parties stipulated to any facts which would permit the inference that \$10,000 or more is involved in any of the plaintiffs' claims, thereby allowing them to be maintained under 28 U.S.C. § 1331. The actions against those two defendants must therefore be dismissed.

We do not reach the question of whether the Eleventh Amendment also bars actions of this type from being maintained against the Commonwealth of Massachusetts or the Division of Civil Service. See *Edelman v. Jordan*, 415 U.S. 651 (1974).

were men. Of the women appointees, 1.8% (374) were veterans, while 54% of the men (14,476) had veteran status.

This overall 57-43 ratio of men to women in the Official Civil Service does not tell the whole story, however. A large percentage of female appointees serve in lower grade permanent positions for which males traditionally have not applied. Some females obtained civil service appointments through a now-defunct practice by which appointing authorities requested only female applicants for particular jobs from the Civil Service Division. Other females have been appointed from lists which did not include many veterans. Agreed Statements of Facts in *Anthony v. Commonwealth* [hereinafter *Anthony Statement*] ¶21; Agreed Statement of Facts in *Feeney v. Commonwealth* [hereinafter *Feeney Statement*] ¶20.

Employment security is an attractive feature of a permanent civil service appointment. An appointee chosen for such a position, who successfully completes a six-month probationary period, receives essentially permanent tenure. Mass. Gen. Laws ch. 31, § 20D. Such appointee cannot be discharged except for cause, and is statutorily entitled to a hearing at which the basis for dismissal may be challenged. Mass. Gen. Laws ch. 31, § 43.

The first step toward obtaining a permanent civil service appointment is the taking of an examination administered by the Civil Service Division. The examination is designed to measure an applicant's relative ability and fitness for the particular position he seeks. For certain positions an "unassembled examination" is administered, consisting merely of assigned scores based upon an applicant's training and experience. For other positions, an applicant is required to take a written test, the results of which will serve as one element in a composite score reflecting an evaluation of the applicant's training and experience.

Once an applicant passes the examination, he becomes an "eligible" and is placed on an "eligible list." Those on the eligible list are then ranked as follows under a formula which is the basis for plaintiffs' complaint:

1. Disabled veterans in order of their composite scores.
2. Other veterans in order of their composite scores.
3. Widows and widowed mothers of veterans in order of their composite scores.
4. All other eligibles in order of their composite scores.

Mass. Gen. Laws ch. 31, § 23.

The Veterans' Preference provided in § 23 is, therefore, an integral part of the selection process. Although a veteran must achieve a passing test grade, an eligible non-veteran can never be placed ahead of a veteran, regardless of how superior his test score might be. As a practical matter, therefore, the Veterans Preference replaces testing as the criterion for determining which eligibles will be placed at the top of the list.³

Whenever a state agency needs to fill a Civil Service vacancy, it notifies the Civil Service Division. The Civil Service Director then "certifies" several candidates for appointment from the top of the appropriate eligible list, in ratios set forth in various administrative regulations, by sending those names to the appointing authority. In most instances, more names are certified for appointment than there are vacancies

³ As noted, within the category of veterans, the statute provides an additional preference for disabled veterans and within the category of non-veterans, the statute provides a preference for widows and mothers of veterans. The parties have not submitted data on the number of individuals who come within these two sub-categories, nor does it appear that their presence has any impact on the plaintiffs' basic contentions. *But see Hutcheson v. Director of Civil Service*, 361 Mass. 480, 281 N.E. 2d 53 (1972).

in order to give the appointing authority a measure of discretion in the actual hiring decision. The appointing authority is required to make the appointment from among the names so certified, but is not required to appoint the person highest on the list. Feeney Statement ¶9.

A full eligible list remains in effect for a maximum of two years, except when no eligibles remain available for appointment before the expiration of that period, or when a new examination is given for a position during the two year effective period of an eligible list. In the latter instance, the remaining eligibles on the prior list are integrated into the new list in order of their composite scores within each preference category. All eligibles who have attained a particular composite score within a preference category must be included among the eligibles certified for appointment. For example, should the Director, in accordance with a given regulation, certify that the five highest scores were 95 to 99, there might well be a number of eligibles who scored within that range. All would be certified.

II.

This Civil Service appointment scheme, subject as it is to the Veterans' Preference formula, is affected in its practical impact by a number of federal statutes and regulations which have limited sharply the opportunity for women to serve in the armed forces. Indeed, the percentage of females in the Official Civil Service who are also veterans (1.8%), is a reflection of the fact that, during most of the post-World War II period, no more than 2% of the armed forces personnel could be women. *See, e.g.*, 32 C.F.R. § 580.4(b). It is not surprising, therefore, that, currently only 2% of Massachusetts veterans are women. Feeney Statement ¶31.

Historically, women were excluded from the military until 1918 when approximately 10,000 were allowed to enlist in the

Navy. After World War I, these volunteer groups were disbanded. Thereafter, until 1942, only nurses were allowed to enlist. Feeney Statement ¶35. From 1948 until 1967, women were prohibited from making up more than 2% of the total personnel in the armed forces.⁴ The Army, the largest branch of the nation's armed services, still maintains a 2% limitation by regulation. 32 C.F.R. § 580.4(b).

Apart from these absolute limitations, various enlistment and appointment criteria have, until recently, been more stringent for women than for men. A man may enlist at age 17. But, until 1967, women were statutorily barred until age 18. 10 U.S.C. § 505 *as amended* by Act of May 24, 1974, Pub. L. No. 93-290 § 1, 88 Stat. 173 Joint Anthony/Feeney Exhibits 100-04 [hereinafter J. Exhs.]. Parental consent was required of women under 21. For men, the age was 18. Feeney Statement ¶38. Moreover, women seeking enlistment have been subject to higher mental aptitude test score requirements and more rigorous physical requirements than men, as well as more extensive application and screening procedures, including requirements for personal references and attractive appearance. J. Exhs. 93, p. 14, 99, 100-04, 107-10, 123, 154. Until recently, the armed services prohibited the enlistment and appointment of married women and women with children less than 18 years of age, while similarly situated men were not so excluded. Feeney Statement ¶38; J. Exhs. 98, 99, p. 2, 103, 104. And, of course, women have always been ineligible for the draft.

⁴ 10 U.S.C. § 3209, *repealed by* Act of November 8, 1967, Pub. L. No. 90-130 § 1(9)(e), 81 Stat. 375; 10 U.S.C. § 3215, *repealed by* Act of November 8, 1967, Pub. L. No. 90-130 § 1(9)(H), 81 Stat. 375; 10 U.S.C. § 5410, *repealed by* Act of November 8, 1967, Pub. L. No. 90-130 § 1(16), 81 Stat. 376; 10 U.S.C. § 8208 *repealed by* Act of November 8, 1967, Pub. L. No. 90-130, § 1(26)(c), 81 Stat. 382; 10 U.S.C. § 8215, *repealed by* Act of November 8, 1967, Pub. L. No. 90-130, § 1(26)(E), (F), 81 Stat. 382.

Nothing in the Massachusetts scheme prohibits women from competing for civil service positions. But the practical consequence of the operation of these federal military proscriptions, in combination with the Veterans Preference formula is inescapable. Few women will ever become veterans so as to qualify for the preference; and so, few, if any, women will ever achieve a top position on a civil service eligibility list, for other than positions traditionally held by women.

The plaintiffs contend that this consequence has effectively deprived them of an opportunity to compete for the most attractive positions in the state civil service. They maintain that such an absolute and permanent negative impact on the opportunities of women to obtain significant public employment consistent with their qualifications violates the equal protection clause of the Fourteenth Amendment. It is to these specific contentions that we now turn.

III.

A.

The Anthony Case.

The plaintiff Carol A. Anthony, is a female resident of Massachusetts, admitted to practice law here. She is a provisional appointee to a counsel position in the Massachusetts Department of Public Welfare. On January 9, 1974, she applied to take an announced unassembled examination for appointment to the permanent position of Counsel I. Her qualifications were rated in May 1974 and Ms. Anthony received a grade of 94, which tied her for the highest score received by any applicant. But, when the eligible list of applicants was established on October 25, 1974, Ms. Anthony, a non-veteran, was not ranked at the top of the list. Instead, she was ranked 57th behind 56 veterans, all of whom were

men and 54 of whom had lower scores than she on the examination. Since new applications were continuously accepted and processed, Ms. Anthony claims that the names of 20 additional veterans who applied for the positions after she did (all of whom were men and 19 of whom received lower scores) were then integrated into the list ahead of her, reducing her eventual position on the list to 77th.

The parties have stipulated that, but for the restraining order entered in the *Anthony* case on November 4, 1974, the defendants would have begun the certification process, and that Ms. Anthony would not have been certified for any of the 19 permanent Counsel I positions which had by that time been requisitioned. Anthony Statement ¶ 15. Given her position on the list, defendants concede that it is unlikely that Ms. Anthony would have been reached for certification for any subsequent counsel vacancy.

If, on the other hand, the Counsel I list had been established by ranking eligibles in the order of their examination grades, without application of the Veterans' Preference formula, Ms. Anthony would have been among the first considered for appointment to permanent Counsel I positions. Solely because of defendants' application of the Veterans' Preference Statute, therefore, Ms. Anthony's position on the list was reduced from a tie for first place to at least 57th. She claims she was thereby effectively deprived of an equal opportunity to be considered for appointment to a permanent Counsel I position. Anthony Statement ¶¶ 9-13, 15, 16, 29; Feeney Statement ¶¶ 9-18; Anthony Exhs. 2, 3, 81; Feeney Exhs. 9, 11; Appendix A.

Plaintiff Kathryn Noonan is also a female resident of Massachusetts, admitted to practice law here. In early 1974, Ms. Noonan applied for a counsel position at the Labor Relations Commission. She was informed by its Chairman that a state-wide examination for the position was imminent and that,

as a result of the Veterans' Preference Statute, her status as a non-veteran gave her little chance of being considered for permanent appointment to the position. Moreover, any interim, provisional appointment as a counsel which she might receive would be terminated after the certification of a veteran. Ms. Noonan was instead offered, and accepted, a provisional appointment to the position of Labor Relations Examiner with the Labor Relations Commission since no state-wide examination for that position was pending. Although she assumed the duties and responsibilities of a counsel, she had the title of an examiner and received the pay for that position which is of a lower grade and pay than a Counsel I position.

Ms. Noonan, however, also took the Counsel I unassembled examination in May 1974. She eventually received a grade of 94, which was the highest grade received by any applicant. Like Ms. Anthony, Ms. Noonan was not ranked at the top of the eligible list for the Counsel I position, but was instead ranked with Ms. Anthony behind at least 56 veterans, all of whom were men and 54 of whom received lower grades on the examination.

But for the entry of the restraining order, the parties agree that Ms. Noonan, like Ms. Anthony, would not have been certified for any of the 19 Counsel I positions then available and would not have been considered for any Counsel I position. If, on the other hand, the Counsel I list had been established by ranking eligibles in the order of their examination grades, without application of the Veterans' Preference formula, Ms. Noonan would have been certified and placed among the first group considered for appointment to permanent Counsel I positions. Indeed, she was told by the Chairman of the State Labor Relations Commission in late 1974 that she would have been recommended for such an appointment. Ms. Noonan's position on the list was substantially reduced,

and she was deprived of these opportunities for appointment to a Counsel I position in 1974, solely because of defendants' application of the Veterans' Preference Statute. Anthony Statement ¶¶ 9-14, 15-17, 29; Feeney Statement ¶¶ 9-18; Anthony Exhs. 2, 3, 82, 84; Feeney Exhs. 9, 11; Appendix A.

The plaintiff Betty A. Gittes is a female resident of the Commonwealth and maintains a private law practice here. She is not a veteran. In early 1974, Ms. Gittes applied for a permanent appointment to a Counsel I position. She received a grade of 92 on the unassembled examination, which tied her for the second highest score received by any applicant. Instead of being ranked near the top of the eligible list by virtue of her examination grade, however, Ms. Gittes was ranked 103rd, behind, among others, 76 veterans, all of whom were men and 64 of whom received lower grades on the examination than she. Like her co-plaintiffs, Ms. Gittes would not have been certified for any of the 19 Counsel I positions which were available and would not have been considered for any Counsel I position. Had the list been established by ranking eligibles in order of their examination grades and without application of the Veterans' Preference Statute, however, Ms. Gittes would have been among the first group of people considered for appointment to permanent Counsel I positions. Anthony Statement ¶¶ 9-13, 15, 16, 29; Feeney Statement ¶¶ 9, 18; Anthony Exhs. 2, 3, 83; Feeney Exhs. 9, 11; Appendix A.

B.

The Feeney Case.

The plaintiff Helen B. Feeney is a female resident of the Commonwealth, and is not a veteran. She has been a long-

time employee of the Commonwealth, having served in the Civil Defense Agency from 1963 to 1967 as a Senior Clerk Stenographer and from 1967 to 1975 as Federal Funds and Personnel Coordinator.

Mrs. Feeney's experience with Civil Service examinations has been extensive. On February 6, 1971, she took an examination for the single position of Assistant Secretary, Board of Dental Examiners. Although she received the second highest grade of 86.68 on the examination, the application of the Veterans' Preference formula caused her to be ranked sixth on the list behind five veterans, all of whom were male and four of whom received lower grades. She was not certified and a male veteran with an examination grade of 78.08 was appointed.

On February 24, 1973, Mrs. Feeney took an examination for the single position of Head Administrative Assistant, Solomon Mental Health Center. Although she received a grade of 92.32, which was the third highest grade on the examination, the application of Veterans' Preference formula caused her to be ranked 14th on the list behind 12 veterans, all of whom were men and 11 of whom had lower examination grades than she. But for the application of the Veterans' Preference, Mrs. Feeney would have been certified as eligible for the position. Instead, she was not certified.

On or about May 18, 1974, Mrs. Feeney took an examination for positions classified as Administrative Assistant. Although she received an examination grade of 87, which would have tied her for 17th place on the list, the Veterans' Preference formula caused her to be ranked 70th behind 64 veterans, 63 of whom were men and 50 of whom had lower examination grades. Although no appointments to any of the seven positions requisitioned from this list (or to any of the 36 other positions now filled by provisionals) have yet been made because of this court's outstanding temporary restraining order,

Mrs. Feeney's opportunity to be considered for appointment to any of these positions has been substantially diminished because of the application of the Veterans' Preference formula. Anthony Statement ¶¶ 9, 18, 19; Feeney Statement ¶¶ 10, 17, 27; Anthony Exhs. 5, 8; Feeney Exhs. 2, 4, 7, 61, 82; Appendices B, C.

On March 28, 1975, Mrs. Feeney was laid off from her position with the Commonwealth's Civil Defense Agency and has since been unemployed. Feeney Exhibit 82.

IV.

A threshold legal question is whether there remains a live controversy between the plaintiffs in the *Anthony* case and the defendants named in that action.

On April 17, 1975, the Massachusetts legislature enacted ch. 134 of the Acts of 1975, amending Mass. Gen. Laws ch. 31, § 5.⁵ The amendment, which became effective on

⁵ Mass. Gen. Laws ch. 31, § 5 now provides:

No rule made by the [Civil Service] commission shall apply to the selection or appointment of any of the following:

counsel, attorneys-at-law, including attorneys designated as counsel or counsellors-at-law, city solicitors, assistant solicitors, town counsels and assistant town counsels (new language emphasized).

Section 2 of the 1975 amending statute then provides:

SECTION 2. The provisions of section five of chapter thirty-one of the General Laws, as amended by section one of this act, shall not impair the civil service status of any person holding employment on a permanent basis on the effective date of this act.

July 16, 1975, removed all appointments for state and municipal legal positions made after its effective date from the provisions of the state civil service law. Thus, the positions sought by the three plaintiffs in the *Anthony* case are no longer subject to the Veterans' Preference. Accordingly, the defendants now claim that the *Anthony* case is moot.

Although the *Anthony* plaintiffs did present a justiciable claim at the outset of the litigation, the "case or controversy" limitation of Article III requires "an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975), quoting *Steffel v. Thompson*, 415 U.S. 452, 459 n. 10 (1974). See *DeFunis v. Odegaard*, 416 U.S. 312 (1974); *Britt v. McKenney*, ___ F. 2d ___ (1st Cir. 1976); *Marchand v. Director, U.S. Probation Office*, 421 F. 2d 331, 332 (1st Cir. 1970). The doctrine of mootness is designed to shield the federal courts from rendering advisory opinions on what the law should be, or being drawn into disputes not affecting the rights of the litigants who are before them. *North Carolina v. Rice*, 404 U.S. 244, 246 (1971). Cf. *Warth v. Seldin*, 422 U.S. 490, 499 n. 10 (1975). The question in each case, therefore, is whether there is a substantial controversy between parties of sufficient immediacy and reality which would allow a court to grant specific relief through a decree of conclusive character. *Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227, 240-41 (1937). In the *Anthony* case, this question must be answered in the negative.

In 1974, when this action was originally brought, the likelihood of the *Anthony* plaintiffs obtaining appointment to Counsel I, or any legal position covered by Civil Service, was unquestionably affected by the Veterans' Preference. Even though the *Anthony* plaintiffs had all received high scores on the unassembled examination they were faced with a situation where veterans with lower scores would have preceded them

on any certification list. Before the Director of Civil Service established a certification list for Counsel I positions, however, this court entered a temporary restraining order prohibiting him from either establishing an eligible list for Counsel I or making any certification of persons qualified for those positions to the appointing agencies. That action prevented any harm to the plaintiffs from the operation of the Veterans' Preference between the time they took the exam and the effective date of ch. 134.

Now, with Civil Service requirements no longer applicable to these counsel positions, appointing authorities are free to consider the plaintiffs without regard to the Veterans' Preference formula. Accordingly, the relief which the *Anthony* plaintiffs ultimately sought in the courts has now been accorded them through legislation, thereby resolving their underlying complaint.

But the plaintiffs oppose a conclusion of mootness, claiming they were injured by the very compilation of an eligible list in October 1974, on which they were ranked too low even to be certified to an appointing agency, and that the effects of that original injury remain. If the selection process operated as they allege it should have, and the Veterans' Preference did not distort the ranking of eligibles, they maintain they undoubtedly would have been certified and *chosen* for permanent positions by now. Accordingly, they argue that their rights can only be restored by an order requiring that they be considered for appointment now, as they should have been considered late in 1974, and, if they are appointed and successfully complete their probationary periods, that they hold their positions with all the protections of the Civil Service Laws as if appointed in late 1974.

This argument misconstrues the operation of the civil service selection process. A high score on the civil service exam, and resulting certification to an appointing agency, is not and

never has been a guarantee of selection. Had there been no Veterans' Preference when the Counsel I eligible list was compiled in 1974, the *Anthony* plaintiffs were assured only of being *considered* for the various vacancies which arose while the list remained in force. The only cognizable injury the *Anthony* plaintiffs suffered by virtue of the Veterans' Preference was being removed from consideration for Counsel I positions. The enactment of ch. 134 now restores precisely that opportunity to them. Their claim for seniority rights dating back to 1974, therefore, is too speculative to breathe life into an otherwise dead issue between the parties. Cf. *Golden v. Zwickler*, 394 U.S. 103 (1969).

To be sure, a Counsel I position today has a slightly different job description than it had in October 1974. Removal of the position from civil service protection means that individuals now appointed do not have "tenure" or the statutory right to a hearing upon discharge. Anyone appointed as a Counsel I, therefore, is subject to a risk not present in October 1974.

The *likelihood* of future injury may, on occasion, serve as a basis for allowing a claim to be maintained even though it may appear at first blush to be moot. See *Super Fire Engineering Co. v. McCorkle*, 416 U.S. 115 (1974); *Roe v. Wade*, 410 U.S. 113, 125 (1973); *Moore v. Ogilvie*, 394 U.S. 814 (1969). But, in this case, any future loss due to the removal of civil service protection, amounts to the *possible* loss of tenure and hearing rights in the event of dismissal. This claim is, at most, incidental to the plaintiffs' attack on the Veterans' Preference and its effect on the initial selection process. Moreover, even if it were somehow related to the plaintiff's complaint, the potential injury resulting from the loss of civil service protection depends upon the occurrence of a chain of events — the plaintiffs' obtaining permanent civil service status, their being discharged and being deprived of a hearing

— which are wholly speculative and now so remote that they do not present any tangible prejudice to any existing interests the plaintiffs may have. See *Preiser v. Newkirk*, 422 U.S. 395, 402-03 (1975); *North Carolina v. Rice*, 404 U.S. 244, 246 (1971); *Hall v. Beals*, 396 U.S. 45 (1969). Cf. *O'Shea v. Littleton*, 414 U.S. 488 (1974); *Laird v. Tatum*, 408 U.S. 1 (1972).

The *Anthony* plaintiffs also claim there is still a likelihood of future harm because they remain interested in non-legal civil service positions which are still covered by the civil service law. Yet, prior to the adoption of ch. 134, the *Anthony* plaintiffs had never clearly indicated such an interest and, indeed, had specifically directed their challenge to the effect of the Veterans' Preference on their opportunities to be considered for Counsel I positions. Moreover, the record does not indicate that they have applied for any other jobs, that they are qualified to hold any other civil service positions, or that the selection process for those positions is affected to the same degree as it allegedly is for the positions they originally sought. To allow the *Anthony* plaintiffs to shift the focus of this case now, and maintain an action because there exists the possibility that they may someday apply for other civil service positions, and might in such an event be deprived of fair consideration because of the operation of the Veterans' Preference, would require us to deal with a controversy which simply does not and may never exist. This we decline to do.

Finally, the *Anthony* plaintiffs maintain that since they have each claimed damages of one dollar their action is still alive. This claim is without merit. Where courts proceed to hear otherwise moot cases because of a claim for damages, that claim is invariably a substantial one, see, e.g., *Stanton v. Stanton*, 421 U.S. 7, 11 (1975), hotly contested by the parties. *Powell v. McCormick*, 395 U.S. 486, 497-98 (1969). In this case, the plaintiffs made no claim for damages until the

enactment of ch. 134, and they concede that the prayer is only a nominal one. Under these circumstances, the damage claim is clearly incidental to the relief sought and, therefore, cannot properly be the basis upon which the court could find the *Anthony* claim justiciable. *Kerrigan v. Boucher*, 450 F. 2d 487, 489-90 (2d Cir. 1971).⁶

Accordingly, this court holds that the claims brought by the three plaintiffs in the *Anthony* case are now moot. We therefore proceed to the merits of the *Feeney* case alone.

V.

A state cannot, without justification, classify its citizens by imposing unequal burdens or awards on otherwise equally situated individuals. In cases involving alleged sex discrimination, the majority position on the Supreme Court would seem to permit a classification based on sex only as long as it was founded on a "convincing factual rationale" which goes beyond "archaic and overbroad generalizations" about the roles of men and women. *Fortin v. Darlington Little League, Inc.*, 514 U.S. 344 (1st Cir. 1975). See *Stanton v. Stanton*, 421 U.S. 7 (1975); *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975); *Schlesinger v. Ballard*, 419 U.S. 498 (1975); *Geduldig v. Aiello*, 417 U.S. 484 (1974); *Kahn v. Shevin*, 416 U.S. 351

⁶ The *Anthony* plaintiffs do not claim that the legislature is likely to reverse its decision to voluntarily remove Counsel I positions from the requirements of civil service, see, e.g., *United States v. W. T. Grant Co.*, 345 U.S. 629 (1953), or that controversies of this type are usually so quickly overtaken by events that the issues raised by the *Anthony* plaintiffs are "capable of repetition, yet evading review." See, e.g., *Roe v. Wade*, 410 U.S. 113, 125 (1973); *Moore v. Ogilvie*, 394 U.S. 814 (1969). Cf. *Cicchetti v. Lucey*, 514 F. 2d 362 (1st Cir. 1975).

(1974); *Frontiero v. Richardson*, 411 U.S. 677 (1973); *Reed v. Reed*, 404 U.S. 71 (1971).⁷

The Massachusetts Veterans' Preference was not enacted for the purpose of disqualifying women from receiving civil service appointments. Theoretically, women are not barred from qualifying as preferred veterans. Yet, the formula's impact, triggered by decades of restrictive federal enlistment regulations, makes the operation of the Veterans' Preference in Massachusetts anything but an impartial, neutral policy of selection, with merely an incidental effect on the opportunities for women. See, e.g., *Castro v. Beecher*, *supra*; *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973). Nor under the circumstances, can the operation of this formula be viewed as an effort by the Commonwealth to set priorities among competing claims for finite state resources. *Jefferson v. Hackney*, 406 U.S. 535 (1972); *Dandridge v. Williams*, 397 U.S. 471 (1970); *Williamson v. Lee Optical Co.*, 348 U.S. 483 (1955).⁸

⁷ Our view of the merits makes it unnecessary to consider the plaintiff's position that sex-based classifications are suspect or that the Veterans' Preference deprives the plaintiffs of a fundamental right, requiring the state to come forward with a showing that the Veterans' Preference is supported by a "compelling interest" in order for it to be sustained. See *Feinerman v. Jones*, 356 F. Supp. 252, 256-59 (M.D. Pa. 1973); *Koelfgen v. Jackson*, 355 F. Supp. 243, 250 (D. Minn. 1972), *aff'd mem.* 410 U.S. 976 (1973).

⁸ This case, therefore, is distinguishable from *Geduldig v. Aiello*, 417 U.S. 484 (1974). There, the California disability insurance program was attached because it did not cover expenses incurred as the result of a normal pregnancy, and in so doing placed a disproportionate burden on women. In finding such a limitation on benefits constitutional, the Court noted that the program was financed through a carefully balanced scheme of payroll deductions which did not draw upon general revenues. A requirement that insurance coverage be extended to normal pregnancies which could have cost an additional hundred million dollars, might well have disrupted the program's finances and placed additional burdens on taxpayers and beneficiaries. Under these circumstances, the Court held that the Constitution did

Rather, the Veterans' Preference formula is a deliberate, conscious attempt on the part of the state to aid one clearly identifiable group of its citizens, those who qualify as veterans, by giving them an absolute and permanent preference in public employment. Clearly, the rewarding of those who have rendered public service as members of the military is a worthy state purpose. But, equally as clear is that the means employed by the Commonwealth for achieving that purpose, the preference formula, succeeds at the absolute and permanent disadvantage of another clearly identifiable group, Massachusetts' women.

The pivotal question before us, therefore, is, given the legitimate state purpose of assisting veterans, does the means by which Massachusetts implements that purpose in the area of public employment unconstitutionally deprive women of their equal protection rights under the Fourteenth Amendment. Our answer is that it does and, therefore, that ch. 134 § 23 is unconstitutional.

Massachusetts, like other states, and like the federal government, has consistently provided preferential treatment in public employment to those who have served in the nation's armed forces. See, e.g., Pa. Stat. Ann. tit. 51 § 492.2 *et seq.* See also 5 U.S.C. §§ 2108, 3309-12, 3316. The modern Veterans' Preference Statute has its roots in legislation enacted

not prohibit the state from making a policy judgment to limit premiums and taxes by limiting coverage. Nowhere did the Court hold that *any* state program which had a disproportionate impact on the interests of women would be constitutional or that *any* statute which provided preferential treatment to one class at the expense of another was permissible under the Fourteenth Amendment. In particular *Geduldig* is distinguishable because the class of persons excluded does not consist of all or virtually all women but only pregnant women.

in the seventeenth century⁹ and represents a key phase of the Commonwealth's continuing efforts on behalf of veterans.¹⁰ The program is designed to encourage service in the armed

⁹ The first veterans' benefit enacted in this country seems to have been a pension provided by the Plymouth Colony in 1636. *Laws of the Colony of New Plymouth* [1636] reprinted in *The Compact with the Charter and Laws of the Colony* 44 (1836). The original public employment preference for veterans was enacted in 1884, Act of June 3, 1884, ch. 320 [1884] Mass. Acts and Resolves 346, and since that time has had what the Supreme Judicial Court has called a "troubled history." *Hutchinson v. Director of Civil Service*, 361 Mass. 480, 482, 281 N.E. 2d 53, 54 (1972). See, e.g., *Commissioner of the Metropolitan District Commission v. Director of Civil Services*, 348 Mass. 184, 203 N.E. 2d 95 (1964); *Mayor of Lynn v. Commissioner of Civil Service*, 269 Mass. 410, 169 N.E. 502 (1929); *Phillips v. Metropolitan Park Commission*, 215 Mass. 502, 102 N.E. 717 (1913); *Opinion of the Justices*, 166 Mass. 589, 44 N.E. 625 (1896); *Brown v. Russell*, 166 Mass. 14, 43 N.E. 1005 (1896); Note, *Preference of Veterans in the Massachusetts Civil Service*, 10 Harv. L. Rev. 236 (1896).

In recent years both private interest groups and legislative committees have proposed changes in the Veterans' Preference. See, e.g., League of Women Voters of Massachusetts, *The Merit System in Massachusetts* (1961); Mass. S. Doc. No. 1060, 34-35; Mass. H. Doc. No. 5100 (1967). Contrary to the defendants' assertions, however, the continuing public debate on the economic and social ramifications of reform of the Massachusetts Veterans' Preference does not affect our responsibility to examine the constitutionality of the current scheme.

¹⁰ The special treatment Massachusetts accords veterans in civil service selection is part of an extensive scheme of state aid to veterans. These benefits include exemptions from license fees, e.g., Mass. Gen. Laws ch. 101, § 24, ch. 175, § 167A, exemption from motor vehicle registration fees, Mass. Gen. Laws ch. 90, § 33, preferences for certain low rent and state funded housing projects, Mass. Gen. Laws ch. 121B, §§ 77, 32(f), 34, exemption from tuition for summer sessions, evening classes, extension and correspondence courses at state colleges and universities, Mass. Gen. Laws ch. 73, § 8A; ch. 69, §§ 7, 7A, and certain retirement benefits. Mass. Gen. Laws ch. 32, §§ 253, 56-58B. See also Committee on Rules of the Two Branches. A Compilation of the Laws Relating to Veterans and Two Branches. A Compilation of the Laws Relating to Veterans and Their Organizations (1974).

services, reward those whose lives have been disrupted because they have served, and provide some assistance during the sometimes uneasy transition from military to civilian life.

Nothing in the Fourteenth Amendment prohibits Massachusetts from providing special treatment to veterans in considering candidates for public employment.¹¹ *Rios v. Dillman*, 499 F. 2d 329 (5th Cir. 1974); *Feinerman v. Jones*, 356 F. Supp. 252 (M.D. Pa. 1973); *Koelfgen v. Jackson*, 355 F. Supp. 243 (D. Minn. 1972), *aff'd mem.* 410 U.S. 976 (1973). Such a policy responsibly recognizes both the special problems of veterans and the need to promote an important aspect of the nation's welfare.

But the worthy purpose of a legislative program is not enough to shield its method of implementation from judicial scrutiny, especially in the face of a challenge based on the Equal Protection Clause. In the context of the Fourteenth Amendment, "[t]he result, not the specific intent is what matters." *Rozecki v. Gaughan*, 459 F. 2d 6, 8 (1st Cir.

¹¹ The recent cases in which courts have had occasion to sanction the policies behind the Veterans' Preference in the face of attacks based on the Fourteenth Amendment have not involved the type of challenge presented in this case. In neither *Rios v. Dillman*, 499 F. 2d 329 (5th Cir. 1974) nor *Koelfgen v. Jackson*, 355 F. Supp. 243 (D. Minn. 1972), *aff'd mem.* 410 U.S. 976 (1973) did the court consider whether the statutes involved in those cases discriminated against women. In *Feinerman v. Jones*, 356 F. Supp. 252 (M.D. Pa. 1973), where the Pennsylvania preference was challenged on grounds of sex discrimination, the statute involved there provided for a point-bonus system, as opposed to an absolute and permanent preference for veterans. The court held that on the record presented in that case the plaintiff had not demonstrated that the particular statute challenged operated in a discriminatory way. See also *Russell v. Hodges*, 470 F. 2d 212, 218 (2d Cir. 1972); *White v. Gates*, 253 F. 2d 868 (D.C. Cir.), *cert. denied*, 356 U.S. 973 (1958); *People ex rel. Sellers v. Brady*, 262 Ill. 578, 105 N.E. 1 (1914); *Goodrich v. Mitchell*, 68 Kan. 765, 75 P. 1034 (1904); *State ex rel. Kangas v. McDonald*, 188 Minn. 157, 246 N.W. 900 (1933); *Commonwealth ex rel. Graham v. Schmid*, 333 Pa. 568, 3 A. 2d 701 (1938).

1972); *Boston Chapter, N.A.A.C.P., Inc. v. Beecher*, 504 F. 2d 1017, 1021 (1st Cir. 1974) *cert. denied*, 421 U.S. 910 (1975). See, e.g., *Taylor v. Louisiana*, 419 U.S. 522 (1975); *Griffin v. Illinois*, 351 U.S. 12 (1956); *Smith v. Allwright*, 321 U.S. 649 (1944); *Guinn v. United States*, 238 U.S. 347 (1915). As Judge Wright has noted: "[t]he arbitrary quality of thoughtlessness can be as disastrous and unfair to private rights and the public interest as the perversity of a willful scheme." *Hobson v. Hansen*, 269 F. Supp. 401, 497 (D. D.C. 1967), *aff'd sub nom. Smuck v. Hobson*, 408 F. 2d 175 (D.C. Cir. 1969) (en banc).

It is not enough that the prime objective of the Veterans' Preference statute, that of aiding those who have served in our nation's armed forces, is legitimate and rational. The means chosen by the state to achieve this objective must also be legitimate and rational. For a court to examine the means of implementation as well as the purpose of a legislative program is not to second-guess the legislature as to what might have been a more effective or preferable course. Rather, by examining the impact on others of a programmatic effort by the state to intentionally benefit one identifiable segment of its population, this court exercises its fundamental responsibility to ensure that all citizens are treated equally and fairly under the law.

The practical effect of Veterans' Preference is clear. Eligible veterans, regardless of qualifications relative to eligible non-veterans, have the public employment field cleared for them on an absolute and permanent basis. The argument that the preference program is somehow related to job qualifications or performance is specious. For each civil service position, the state normally provides selection criteria related to the demands of the particular job. The Veterans' Preference is in no way based on such criteria. On the contrary, it suspends the application of these job-related criteria and

substitutes a formula that relegates demonstrable professional qualifications to a secondary position, absolutely and permanently.

The negative impact that this absolute preference has on women is dramatic. The list of nineteen eligibles for the Head Administrative Assistant vacancy sought by Mrs. Feeney at the Solomon Mental Health Center included four women. But for the application of the preference, plaintiff Feeney would have ranked third on the list and would have been among the first set of eligibles considered for the position. Application of preference, however, relegated Mrs. Feeney to 14th (behind 12 male veterans, 11 of whom received lower scores than she did) and, as a result, she was not certified for consideration for the position.

Of the four women on the list, none obtained the preference (0%), while 12 of the 15 men (80%) did achieve preferred status. Moreover, in relative terms, the 12 veterans gained an average of four places, while the four women lost an average of seven. But for the application of the Veterans' Preference, three of the four women on the list would have been ranked in the top 12 places. Because of the preference, those places were totally occupied by male veterans.

The same pattern is also evident in the much larger Administrative Assistant list which served as a pool for numerous positions in state government. Plaintiff Feeney, whose test score would have put her within the top twenty positions, ranked 70th on the list behind 52 veterans with lower scores and 12 veterans with the same or higher scores. Of the 41 women on the list, 37 were ranked below male veterans who received lower scores than they did; one qualified for the preference (2.5%) while 63 of the 135 men (47%) did so. These 41 women lost an average of 21.5 places each while 63 male veterans gained an average of 28 places each. If the list had been compiled without the Veterans' Preference, nearly 40%

of the women would have occupied the top third of the list which is now occupied, with one exception, by men.

The phenomenon illustrated in the lists on which Mrs. Feeney was named is not an aberration. The parties have submitted fifty eligible lists in both the *Anthony* and *Feeney* cases, compiled chiefly from 1971 through 1975. *Anthony* Exhs. 11-60; *Feeney* Exhs. 13-62. In every one, the application of the Veterans' Preference, in significant fashion, causes men to gain places at the expense of women. Moreover, of the approximately 500 men and 1200 women represented on the lists, 38% of the men are veterans while only 0.6% of the women are veterans. And in each of the lists, one or more female eligibles were placed behind male veterans with lower scores and were thereby deprived of certification opportunity which, otherwise, they would have had.

To be sure, 43% of the permanent appointments in a ten year period from 1963 to 1973 have been women (even though 56% of the women who took civil service examinations in that 10 year period passed). Yet, a closer examination of those figures reveals, as is conceded by all parties, that the female appointees are generally clerks and secretaries, lower-grade and lower-paying positions for which men traditionally have not applied. Few, if any, females have ever been considered for the higher positions in the state civil service.

Women's lack of success in obtaining significant state employment has no relation to any objective standard of assessing qualifications. Rather, the percentage of female civil service appointees is inescapably tied to circumstances totally beyond their control, or choice — the federal government's policy of limiting the number of women who may serve in the armed forces. In practical application, the combination of federal military enrollment regulations with the Veterans' Preference is a one-two punch that absolutely and permanently

forecloses, on average, 98% of this state's women from obtaining significant civil service appointments.

Whatever their merit¹² in terms of military priorities, it is clear that federal military enlistment regulations make it unlikely that a woman will serve in the armed forces and, thereby, become eligible for the Massachusetts Veterans Preference. Facially, the Veterans' Preference is open to both men and women. But to say that it provides an equal opportunity for both men and women to achieve a preference would be to ignore reality. By making status as a veteran the *sine qua non* for obtaining the most attractive positions in the state civil service, Massachusetts has effectively and unquestioningly incorporated into its public employment policy a set of criteria having no demonstrable relation to an individual's fitness for civilian public service. By doing so it has caused disastrous negative consequences for the employment opportunities of women, a clearly identifiable segment of the Commonwealth's population entitled to fair and equal protection under the law.

Despite its troublesome impact on the women of this Commonwealth, the operation of the Massachusetts Veterans' Preference might escape constitutional rejection if it were the only means by which the state could implement a program of veterans assistance in the area of public employment. But, the fact is that there are alternatives available to the state to achieve its purpose of aiding veterans, without doing so at the singular expense of another identifiable class, its women.

For example, a point system could be established designed to offer some reward for length of service in the armed services and/or to recognize particular abilities and skills likely to have

¹² We express no opinion on the constitutionality of this series of statutes and regulations affecting the opportunities of women in the armed services.

been acquired as a result of military service.¹³ A time limit for exercising the preference could also be established so as to tailor its use to those who have shortly returned to civilian life. Such approaches would not *absolutely* and *permanently* disadvantage the women of this Commonwealth to the advantage of a male veteran. Of course, the constitutionality of any such alternatives are not now before us. Nor by mentioning them do we assume the role of a super-legislature. We point out such alternatives only to indicate that Massachusetts has considerable flexibility in the manner in which it can aid its veterans, without doing so at the absolute and permanent expense of its women.

While there is no constitutional right to public employment, once a state decides to provide public service jobs, the Fourteenth Amendment demands that it must do so in a fair and equitable manner.¹⁴ But this Veterans' Preference formula, tied as it is to federal military enrollment policy, is neither fair nor equitable in its impact on women. Given the fact that effective, but less drastic, alternatives are available, the state may not give an absolute and permanent preference in the area of public employment to its veterans at the expense of its women who, because of circumstances totally beyond their control, have little if any chance of becoming members of the

¹³ The Veterans' Preference provided for applicants to federal civil service positions operates on just such a principle. 5 U.S.C. §§ 2108, 3309-12, 3316. See generally U.S. Civil Service Commission, *History of Veterans' Preference in Federal Employment* (1956). Cf. *Johnson v. Robison*, 415 U.S. 361 (1974); *Mitchell v. Cohen*, 333 U.S. 411 (1948).

¹⁴ *Boston Chapter N.A.A.C.P., Inc. v. Beecher*, 504 F. 2d 1017 (1st Cir. 1974), cert. denied, 421 U.S. 910 (1975); *Castro v. Beecher*, 459 F. 2d 725 (1st Cir. 1972); *Feinerman v. Jones*, 356 F. Supp. 252, 257-58 (M.D. Pa. 1973). Cf. *Pickering v. Board of Education*, 391 U.S. 563 (1968); *Greene v. McElroy*, 360 U.S. 474 (1959); *Slochower v. Board of Higher Education*, 350 U.S. 551 (1956); *Wieman v. Updegraff*, 344 U.S. 183 (1952).

preferred class. Under these circumstances, this court holds that Mass. Gen. Laws ch. 31, § 23 deprives women of equal protection of the laws and, therefore, is unconstitutional.¹⁵

LEVIN H. CAMPBELL,
Circuit Judge.

JOSEPH L. TAURO,
District Judge.

¹⁵ In view of this holding we have no occasion to consider the plaintiff's argument that the Massachusetts Veterans' Preference violates due process by creating an irrebuttable presumption which has no basis in fact.

APPENDIX.

Mass. Gen. Laws ch. 31, § 23, the heart of the Veterans' Preference provisions of the Massachusetts Civil Service Law, provides:

The names of persons who pass examinations for appointment to any position classified under the civil service shall be placed upon the eligible lists in the following order:

(1) Disabled veterans as defined in section twenty-three A, in the order of their respective standing; (2) veterans in the order of their respective standing; (3) persons described in section twenty-three B in the order of their respective standing; (4) other applicants in the order of their respective standing. Upon receipt of a requisition, names shall be certified from such lists according to the method of certification prescribed by the civil service rules. A disabled veteran shall be retained in employment in preference to all other persons, including veterans.

Mass. Gen. Laws ch. 4, § 7, cl. 43 provides a general definition of the term veteran.

"Veteran" shall mean any person, male or female, including a nurse, (a) whose last discharge or release from his wartime service, as defined herein, was under honorable conditions and who (b) served in the army, navy, marine corps, coast guard, or air force of the United States for not less than ninety days active service, at least one day of which was for wartime service, provided, that any person who so served in wartime and was awarded

a service-connected disability or a Purple Heart, or who died in such service under conditions other than dishonorable, shall be deemed to be a veteran notwithstanding his failure to complete ninety days of active service.

"Wartime service" shall mean service performed by a "Spanish War veteran", a "World War I veteran", a "World War II veteran", a "Korean veteran", a "Vietnam veteran", or a member of the "WAAC". . . .

None of the following shall be deemed to be a "veteran":

(a) Any person who at the time of entering into the armed forces of the United States had declared his intention to become a subject or citizen of the United States and withdrew his intention under the provisions of the act of Congress approved July ninth, nineteen hundred and eighteen.

(b) Any person who was discharged from the said armed forces on his own application or solicitation by reason of his being an enemy alien.

(c) Any person who was designated as a conscientious objector upon his last discharge or release from the armed forces of the United States.

(d) Any person who has been proved guilty of wilful desertion.

(e) Any person whose only service in the armed forces of the United States consists of his service as a member of the coast guard auxiliary or as a temporary member of the coast guard reserve, or both.

(f) Any person whose last discharge or release from the armed forces is dishonorable.

"Armed forces" shall include army, navy, marine corps, air force and coast guard.

"Active service in the armed forces", as used in this clause shall not include active duty for training in the army national guard or air national guard or active duty for training as a reservist in the armed forces of the United States.

Mass. Gen. Laws ch. 31, §§ 21 and 21A then add to the general definition provided in chapter 4.

Section 21 provides:

[t]he word "veteran" as used in this chapter shall mean: any citizen who: —

(a) Is a veteran as defined in clause Forty-third of section seven of chapter four, or (b) meets all the requirements of said clause Forty-third except that instead of performing wartime service as so defined he has been awarded one of the campaign badges enumerated in this section, or has been awarded the congressional medal of honor.

"Campaign badges" shall include the following and no other: —

Indian Campaign, Mexican Service, Mexican Border Service, Army of Cuban Occupation, Army of Puerto Rican Occupation, Nicaraguan Campaign nineteen hundred and twelve, Haitian Campaign nineteen hundred and fifteen, or nineteen hundred and nineteen and nineteen hundred and twenty, Dominican Campaign, Second Nicaraguan Campaign, Yangtze Service, Army of Occupation of Germany, China Service, Navy Occupation Service, Army of Occupation, or Medal for Humane Action.

Section 21A provides:

[f]or the purpose of this chapter only, the word "veteran" shall include any person who meets all the requirements of section twenty-one except that instead of performing ninety days' active service, including ten days' wartime service as so defined, he has performed active service in the armed forces of the United States at any time between April sixth, nineteen hundred and seventeen and November eleventh, nineteen hundred and eighteen, inclusive, or any person with active service in the armed forces at any time between September sixteenth, nineteen hundred and forty and June ninth, nineteen hundred and fifty-four, inclusive, who took an examination or filed an application on or before June ninth, nineteen hundred and fifty-four or who was on an existing civil service eligible list on said date.

CAMPBELL, *Circuit Judge* (concurring). I join the opinion of the court, and wish only to reemphasize the limited reach of our holding. A state may lawfully enact legislation to benefit its veterans, and one way that it may do so is by giving them preference in the obtaining of public employment. But I see a basic distinction between giving veterans credit and even a headstart over other jobseekers on the one hand, and on the other giving them complete entitlement to the most desirable jobs, no matter what the competition. The Massachusetts veterans preference statute does the latter, and I therefore believe it goes too far, by creating a preference so absolute that all women, except the very few who are veterans, are effectively and permanently barred from all areas of civil service employment not shunned by men.

Admittedly the statute is not on its face gender-based, and I agree with Judge Murray that a state, in pursuit of its lawful objects, can go very far in enacting legislation that has an incidental impact upon persons of one gender. But surely if legislation has the effect of broadly excluding a constitutionally protected group such as women from opportunities normally open to all, there comes a point where courts must ask not only whether the state's aims are lawful but whether the means are permissible. Here I am of the opinion that the exclusionary impact is so total as to amount to a denial of equal protection under the fourteenth amendment. There are available to Massachusetts many other means for aiding and preferring its veterans which would not lead to a near blanket, permanent exclusion of all women from a major sector of employment.

LEVIN H. CAMPBELL,
Circuit Judge.

Murray, J. I concur in the opinion and judgment of the court in the *Anthony* case.

The court holds in the *Feeney* case that Mass. Gen. Laws ch. 31, § 23 is unconstitutional because it deprives women of equal protection of the laws. In reaching this result the court acknowledges that the Massachusetts Veterans' Preference statutory scheme "was not enacted for the purpose of disqualifying women from receiving civil service appointments," *ante* at 25, that the policy of "rewarding . . . those who have rendered public service as members of the military is a worthy state purpose," *id.* at 26, and that " . . . there is no constitutional right to public employment." *Id.* at 36. The court also declares that there is nothing in the Fourteenth Amendment that prohibits the state from "providing special treatment to veterans in considering candidates for public employment," *id.* at 28, and that such a state policy "responsibly recognizes both the special problems of veterans and the need to promote an important aspect of the nation's welfare." *Id.* at 29. I find nothing in the statutory scheme to support the supposition that the Commonwealth in furtherance of the legitimate state purposes referred to by the court has created a statutory classification which is either gender based or invidiously discriminates against women.

As justification for its holding, the court employs a means/end calculus to assess the constitutionality of the Veterans' Preference statute by analyzing the effect on women of its implementation. Using this analysis the court concludes that while the end of rewarding veterans is legitimate and rational, the means adopted by the statutory scheme to achieve the end are not. At the heart of the court's decision is the conclusion that there is justification in the equal protection clause for a court to exercise "its fundamental responsibility to ensure that all citizens are treated equally and fairly under the law." *Id.* at 30. This largely unobjectionable general statement of

justification can quite easily be read as authority for a court's displacement of every choice of classification made by a legislature.¹ Considerations of federalism and separation of powers, however, have disciplined the exercise of this "responsibility" by causing development by the Supreme Court of certain traditional principles for evaluation of equal protection challenges to state legislation. The central theme of the equal protection analysis developed by the Supreme Court has been the search for the proper standard of review by which to measure challenged legislation. I find in the court's opinion here with its means/end calculus neither sufficient concern for the institutional considerations militating against displacement of state legislation nor a fully articulated standard by which the legislature's choice of means should be evaluated. Having concluded that proper concern for the relevant considerations leads to a standard of review under which the legislation challenged in this case must be sustained, I respectfully dissent for the reasons stated below.

I.

In addressing an equal protection challenge to state legislation a court must be sensitive to the crucial institutional considerations which define its role as that of restraint when

¹ Professor Cox has noted, "[o]nce loosed the idea of Equality is not easily cabined." Cox, *The Supreme Court, 1965 Term — Foreword: Constitutional Adjudication and the Promotion of Human Rights*, 80 Harv. L. Rev. 91 (1966). The equal protection clause has not been read, however, as a general warrant to rewrite legislation because some persons are treated differently from others in the classification schemes established by legislation. "Classification is inherent in legislation; the Equal Protection Clause has not forbidden it." *Morey v. Doud*, 354 U.S. 457, 472 (1957). (Frankfurter, J., dissenting).

called upon to interpose its judgment against the judgment of the political processes of the states. Justice Brennan has noted that "[t]he maintenance of the principles of federalism is a foremost consideration in interpreting any of the pertinent constitutional provisions under which [the Supreme] Court examines state action." *Allied Stores of Ohio v. Bowers*, 358 U.S. 522, 532 (1959) (Brennan, J., concurring). Principles of federalism are not merely a recognition "that our Constitution is an instrument of federalism," *id.*, but also a recognition of the value of state experimentation with a variety of means for solving social and economic problems. Cf. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting). See *Younger v. Harris*, 401 U.S. 37 (1971) (Black, J., for the Court, for a discussion of "Our Federalism"). In approaching the legislation challenged here these principles require due recognition of the settled arrangements adopted by virtually every state legislature² — not to mention the Federal Government³ — granting some form of veterans preference in public employment.

The doctrine of separation of powers requires that the courts give deference to the means by which the representative branches of government choose to implement state policies. Justice Harlan has succinctly summarized the dangers inherent in overly intrusive judicial review of legislation:

It is said that there can be nothing wrong with courts exercising [active judicial review] because whatever they may do can always be undone by legislative enactment

² All but four states use a veterans preference in connection with public employment appointments. Brief for the Defendants at 34 n. 9 Cf. *Koelfgen v. Jackson*, 355 F. Supp. 243, 252 n. 9 (D. Minn. 1972), *aff'd mem.* 410 U.S. 976 (1973).

³ 5 U.S.C. §§ 2108, 3309-12, 3316.

or constitutional amendment . . . [But] in the end what would eventuate would be a substantial transfer of legislative power to the courts.

Harlan, *Thoughts at a Dedication: Keeping the Judicial Function in Balance*, 49 A.B.A.J. 943, 944 (1963).

The issue for the courts examining challenged legislation as Justice Douglas, speaking for the Court, put it in a case upholding a state statute which discriminated against men on the basis of gender as such,

is not whether the statute could have been drafted more wisely, but whether the lines chosen by the . . . Legislature are within constitutional limitations. The dissents would use the Equal Protection Clause as a vehicle for reinstating notions of substantive due process that have been repudiated. "We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, [which] are elected to pass laws."

Kahn v. Shevin, 416 U.S. 351, 356 n. 10 (1974).

In weighing the separation of powers considerations inherent in any constitutional challenge to legislation "it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts." *Missouri, K. & T. Ry. v. May*, 194 U.S. 267, 270 (1904) (Holmes, J.). It is therefore not inapposite to note in considering the challenge here that Congress has taken an active role in defining the applicability of the Fourteenth Amendment to gender discrimination in the employment context through Title VII of the Civil Rights Act of 1964.

42 U.S.C. § 2000e-2. Congress, however, has specifically chosen to protect veterans preference legislation from challenge under Title VII. 42 U.S.C. § 2000e-11.⁴ To paraphrase Justice Brennan in *Frontiero v. Richardson*, 411 U.S. 677 (1973), the judgment of a coequal branch of government which has specifically addressed the issue of accommodating equal employment rights with veterans preference legislation is not without significance in evaluating the question presented in this case. *Id.* at 687-88.

II.

Guidance for judicial inquiry in an equal protection case is set out in *Dunn v. Blumstein*, 405 U.S. 330 (1972), where the Court said "we look, in essence, to three things: the character of the classification in question; the individual interests affected by the classification; and the governmental interests asserted in support of the classification." *Id.* at 335. The gravamen of plaintiff Feeney's complaint is that the statute and its implementation "unlawfully discriminate in public employment on the basis of sex." Para. 36. The Supreme Court, in recent cases, has defined sex discrimination as dissimilar treatment of men and women who are similarly situated. *Frontiero v. Richardson*, *supra*, at 688, citing *Reed v. Reed*, 404 U.S. 71, 77 (1974).

Treating the statutory classification first, it is obvious that the division between veterans and non-veterans is not drawn along sex lines and does not provide for dissimilar treatment for similarly situated men and women. On its face the statute is neutral, and, beyond that, there is no showing that the

⁴ Cf. EEOC, Decision 74-64, CCH Emp. Prac. Guide ¶ 6419.

statutory class distinctions "are mere pretexts designed to effect an invidious discrimination against the members of one sex or the other. . .". *Geduldig v. Aiello*, 417 U.S. 484, 496-97 n. 20 (1974). The statute was not passed to disqualify women from civil service appointments, as the court has acknowledged. *Ante* at 25. If there exists the almost insuperable barrier to women attaining higher level civil service jobs, a result the court has found, it is a circumstance that non-veteran women share with a large number of non-veteran men.⁵ This circumstance presents an even less compelling claim for sex discrimination than *Geduldig v. Aiello*, *supra*, where only women were in the group burdened by the classification.⁶ I cannot assent to the supposition that plaintiff has shown the classification challenged here to be sex based or that

⁵ The agreed statement of facts filed by the parties indicates that 852,000 male veterans and 16,000 female veterans reside in the Commonwealth. The agreed statement also indicates that approximately 1,990,000 males and 1,990,000 females over the age of 18 live in the Commonwealth. Anthony Statement ¶ 35. Based upon these figures, approximately 57 percent of the males over the age of 18 and 99 percent of the females over 18 in the Commonwealth are non-veterans.

⁶ The court distinguishes *Geduldig* on the basis of the subject matter of the legislation challenged there — California's disability insurance program. *Ante* at 25 n. 8. But the principle teaching of *Geduldig* as I view it is the definition of sex discrimination. The Supreme Court's definition stated therein, as legislation that is either based on gender as such or invidiously discriminates against one or the other sex, has led one commentator who favors a much broader constitutional definition of sex discrimination to conclude that:

the Court will not find states to be engaging in invidious discrimination in violation of the equal protection clause where they draw distinctions between men and women on the basis of traits exclusive and peculiar to one or the other sex.

Comment, *Geduldig v. Aiello, Pregnancy Classifications and the Definition of Sex Discrimination*, 75 Colum. L. Rev. 441, 442 (1975).

it invidiously discriminates against women.⁷ Having reached that conclusion, I, like the court, find it unnecessary to address the question whether sex discrimination involves legislative creation of a suspect category.⁸

It is clear that plaintiff Feeney's interest at stake in the case is her interest in appointment to an administrative assistant position in the civil service. There is, to be sure, a due process dimension to the procedures by which the Commonwealth provides for the allocation of civil service jobs.⁹ More

⁷ The court states that "in the context of the Fourteenth Amendment '[t]he result, not the specific intent is what matters,'" *ante* at 29, citing six cases in support of that proposition. I find nothing in the cases cited, particularly in light of the teaching of *Geduldig* regarding the definition of sex discrimination, to justify an "impact" theory of discrimination here. Cf. *Smith v. Troyan*, 520 F. 2d 492 (6th Cir. 1975), *petition for cert. filed*, 44 U.S.L.W. 3360.

⁸ A majority of the Supreme Court has not yet been found to declare sex discrimination a suspect classification. Cf. *Frontiero v. Richardson*, 411 U.S. 677, 682-88 (1973) (Brennan, J., for plurality contending sex is suspect classification). A majority of the Court has apparently not found it necessary to reach the question. Cf. *Stanton v. Stanton*, 421 U.S. 7, 13 (1975); *Smith v. Troyan*, 520 F. 2d at 495 n. 6.

⁹ See, e.g., *Arnett v. Kennedy*, 416 U.S. 134 (1974); *Board of Regents v. Roth*, 408 U.S. 564 (1972); *Perry v. Sinderman*, 408 U.S. 593 (1972).

The court takes the position that the Fourteenth Amendment "demands that [a state providing public employment] must do so in a fair and equitable manner." *Ante* at 36 & n. 14. I do not read *Boston Chapter N.A.A.C.P., Inc. v. Beecher*, 504 F. 2d 1017 (1st Cir. 1974), *cert. denied*, 421 U.S. 910 (1975), and *Castro v. Beecher*, 459 F. 2d 725 (1st Cir. 1972), to mandate in a public employment context a more rigorous constitutional concept than is required by traditional equal protection analysis or by Title VII when applicable. As the court pointed out in *Feinerman v. Jones*, 356 F. Supp. 252:

All of the cases which have talked of the need for compelling state interests in connection with state employment practices have either involved other constitutional rights, such as first amendment freedoms,

to the point for purposes of analysis of equal protection grounds, the basis on which the court rests its decision, is whether plaintiff's interest in public employment can be termed a "fundamental interest," a term having specific consequences for determination of the proper standard of federal review of the legislation. The Supreme Court in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973), articulated the "key to discovering" whether an asserted individual interest can be viewed to be of such fundamental importance that unequal treatment of the interest under a state statute, absent a strong showing of justification, will require a federal court to strike down the legislation. The Court there stated that "the answer lies in assessing whether [the interest is] explicitly or implicitly guaranteed by the Constitution." *Id.* at 33-34, see *Shapiro v. Thompson*, 394 U.S. 618, 642 (1969) (Stewart, J., concurring). As the court here acknowledges, *ante* at 36, there is no constitutional right to public employment, and, therefore, under traditional equal protection analysis the plaintiff's interest cannot be viewed to be a "fundamental interest."

or have dealt with the exclusion or dismissal of people from public employment on arbitrary grounds without proper due process procedures.

Id. at 258.

Plaintiff's due process argument that the statute is unconstitutional because it raises an irrebuttable presumption that non-veterans are not as qualified for civil service positions as are veterans is not persuasive. The doctrine of irrebuttable presumptions is directed at statutory schemes which raise evidentiary presumptions against a specific class. See, e.g., *Board of Educ. v. LaFleur*, 414 U.S. 632 (1974); *Vlandis v. Kline*, 412 U.S. 441 (1973). The due process objection to those presumptions is that they cannot be overcome by factual demonstration. The classification effected by the Veterans' Preference statute under attack here is of a different character. It does not represent an evidentiary assumption, rather it represents a policy choice of rewarding one class of citizens.

There are valid reasons which justify the Commonwealth's interest in creating a preference for veterans, that is, of providing special benefits to a class of persons deemed to have made special sacrifices for their country. In *Feinerman v. Jones*, 356 F. Supp. 252 (M.D. Pa. 1973) (three-judge court), the "underlying justifications" of upholding Veterans' Preference legislation were expressed:

- (1) As a recognition that the experience, discipline, and loyalty which veterans gain in military service is conducive to the better performance of public duties;
- (2) As a reward for those veterans who, either involuntarily or through enlistment, have served their country in time of war; and
- (3) As an aid in the rehabilitation and relocation of the veteran whose normal life style has been disrupted by military service. [Footnote omitted.]

Id. at 259. Other courts have held these reasons a valid basis for the statutory classification of veterans and non-veterans. See *Russell v. Hodges*, 470 F. 2d 212, 218 (2d Cir. 1972); *Koelfgen v. Jackson*, 355 F. Supp. 243 (D.C. Minn. 1972) (three-judge court), *aff'd mem.* 410 U.S. 976 (1973). Cf. *Hutcheson v. Director of Civil Service*, 361 Mass. 480 (1972).¹⁰ There is nothing in the Fourteenth Amendment that precludes the granting of a preference to veterans who have initially passed a civil service examination.

¹⁰ *Johnson v. Robison*, 415 U.S. 361 (1974); *Mitchell v. Cohen*, 333 U.S. 411 (1948).

III.

Traditional equal protection analysis has presented a court with a choice of tests to determine the validity of challenged state legislation — restrained review and active review. See generally, *Developments in the Law — Equal Protection*, 82 Harv. L. Rev. 1065, 1076-1132. As the Supreme Court stated in *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 172 (1972): "The tests to determine the validity of state statutes under the Equal Protection Clause have been variously expressed, but this Court requires, at a minimum, that a statutory classification bear some rational relationship to a legitimate state purpose." Active review — a strict standard of review under the Equal Protection Clause — which requires the state to show that the statutory classification was necessary to promote a "compelling state interest," is called for only when the discrimination is based on a classification of a suspect character or adversely affects a fundamental interest. The factual requirements calling for active review are not present and a more restrained standard of review should be applied here.¹¹

Assuming *arguendo* that the statutory scheme challenged here is sex discrimination, plaintiff's claim should be tested by a standard of review which lies somewhere between restrained review and active review.¹² In *Reed v. Reed*, *supra*, where the classification in the statute was explicitly sex based, the standard articulated was that the challenged classification "must be reasonable, not arbitrary, and must rest upon some

¹¹ See Section II of this opinion *supra*.

¹² As more fully discussed in Section II, *supra*, I have concluded that this case does not involve sex discrimination. Accordingly, the standard of review I would employ here would be one even less demanding than that discussed in the text in Sections III and IV.

ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstanced shall be treated alike." 404 U.S. at 76, citing *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920). This traditionally deferential articulation of the standard has been applied in gender-based classification cases with a good deal more vigor than would normally be associated with restrained review. An intermediate standard has been articulated and applied in cases involving gender-based discrimination as embodying a requirement that the state show "a factually demonstrable distinction between the positions of the men and women affected by the classification which is substantially related to its objective." *Women's Liberation Union of Rhode Island v. Israel*, 512 F. 2d 106, 108 (1st Cir. 1975). See also, Nowak, *Realigning the Standards of Review Under the Equal Protection Guarantee — Prohibited, Neutral, and Permissive Classifications*, 62 Geo. L. J. 1071 (1974). Even assuming this case involves sex discrimination, based on the court's finding on the record here of nonintentional adverse discriminatory impact on women as a class, a less stringent standard of review than the demonstrable rational basis test is justified. Cf. *Castro v. Beecher*, 459 F. 2d 725, 733 (1st Cir. 1972).

IV.

In applying the demonstrable rational basis test to the case here, it should be recognized that the Veterans' Preference statute and the civil service regulations represent a fully considered "rough accommodation"¹³ of the Commonwealth's

¹³ The Veterans' Preference and the civil service scheme have been modified from time to time throughout their history and the Commonwealth has

interests which come into play when priorities are set for the allocation of a limited state resource. Cf. *San Antonio Independent School District v. Rodriguez*, 411 U.S. at 55. The scheme provides for identification through a test of the pool of applicants qualified to perform a specific job; it then arranges the qualified persons on an eligibility list in the order of their performance on the test. The statute provides that the names of persons who pass the examinations for appointment to a civil service position shall be divided into two classes: veterans and non-veterans. Those men and women placed in the veterans classification receive the benefit of the statute and those men and women not classed as veterans do not receive the benefit of the statute. The preference is integrated into the scheme by placing qualified veterans at the top of the eligibility list. The statutory scheme incorporates in two ways a policy of the Commonwealth that raw test score need not be the absolute measure of whether an individual should be chosen for a job. First, it provides certification to an appointing authority in order of appearance on the list of a number of persons greater than the number of jobs available, but leaves the appointing authority free to select a certified applicant irrespective of the applicant's test score; second, the scheme gives special advantage in placement on the list to qualified veterans.

not been adverse to limiting the breadth of the preference. Brief for the defendants at 44-45. The Commonwealth's efforts to adjust the competing interests involved in civil service selection procedures are well illustrated by the disposition of the *Anthony* case. This change in the application of the Veterans' Preference is but a recent illustration of the Commonwealth's continuing efforts to accommodate the claims of diverse groups for the limited number of state jobs.

Where the clear purpose of the statute is to prefer qualified veterans for consideration for civil service jobs, analysis of the statutory scheme and the civil service regulations demonstrates that the classification at the very least substantially serves and furthers obvious state interests. To assert that the legislation "suspends the application of . . . job-related criteria and substitutes a formula that relegates demonstrable professional qualifications to a secondary position, absolutely and permanently," *ante* at 31, or that the Commonwealth has "incorporated into its public employment policy a set of criteria having no demonstrable relation to an individual's fitness for civilian public service," *ante* at 34, assumes the unacceptable premise that only selection criteria adhering exclusively and strictly to raw test score meet the standard of "demonstrable professional qualifications." Irrespective of whether the preference for veterans is applied in the selection of an applicant for a civil service job, the Commonwealth, as noted above, does deviate from the raw test scores in its selection procedures. The assertion that the preference is absolute and permanent is but another way of declaring that "the preference accorded to veterans is simply too great," *Rios v. Dillman*, 499 F. 2d 329, 332 (5th Cir. 1974), not that there is no rational basis for the classification.

The Commonwealth's Veterans' Preference statute is based on the factually demonstrable distinction of whether or not a person is a veteran. This classification is substantially related to the Commonwealth's purpose to benefit veterans in the area of public employment. The Commonwealth's choice of means to implement the purpose does not invidiously discriminate against women. The issue is whether the means chosen by the Commonwealth are within constitutional limitations, and as I believe they are I am unwilling to engage in speculation

regarding alternative measures¹⁴ for achieving the statutory purpose. I would uphold the statute.

FRANK J. MURRAY,
United States District Judge.

¹⁴ A bonus point Veterans' Preference such as the one employed by the Federal Government, *ante* at 36-37 & n. 13, is one which would appear to have no practical effect of benefiting non-veteran women, like the plaintiff, seeking administrative assistant positions. After reordering the administrative assistant list, *see* Brief of the Plaintiffs at 235-38, to apply a bonus point preference system like the Federal system, it appears that the highest non-veteran woman would not be reached until at least eighteen names are certified from the list. Plaintiff would not be reached under such system until at least 31 names are certified. Since under civil service procedure the number of requisitioned positions would result in certification of no more than eleven names, no benefit would accrue under such bonus point system to non-veteran women generally and plaintiff in particular.

United States District Court. District of Massachusetts.

HELEN B. FEENEY,
PLAINTIFF,

v.

CIVIL ACTION
No. 75-1991-T

THE COMMONWEALTH OF
MASSACHUSETTS ET AL.,
DEFENDANTS.

Notice of Appeal to the Supreme Court of the United States.

Notice is hereby given that the Defendants, acting by and through their attorneys and pursuant to Supreme Court Rule 10, hereby appeal the judgment of this Court to the Supreme Court of the United States. In accordance with the provisions of Supreme Court Rule 10(2), the Defendants specify:

1. The parties taking the appeal are the Personnel Administrator of the Commonwealth (referred to as the Massachusetts Director of Civil Service in the pleadings) and the members of the Massachusetts Civil Service Commission, who are collectively referred to herein as the Defendants;

2. Defendants appeal from paragraph 3 of the Judgment and Order of the Court entered by Tauro, D.J., on March 29, 1976, and from the order enjoining Defendants from utilizing Mass. Gen. Laws c. 31, § 23 in any future selection of persons to fill civil service positions with the Commonwealth; and

3. Direct appeal to the Supreme Court of the United States is authorized by 28 U.S.C. 1253.

Respectfully submitted,

By Their Attorneys,

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Dated: May 25, 1976.

SUPREME COURT OF THE UNITED STATES

COMMONWEALTH OF MASSACHUSETTS ET AL. v.
HELEN B. FEENEY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

No. 76-265. Decided November 8, 1976

PER CURIAM.

This Court, on its own motion, hereby certifies to the Supreme Judicial Court of the Commonwealth of Massachusetts, pursuant to Rule 3:21 of the Rules of that court, the question of law hereinafter set forth.

Statement of Facts

On March 29, 1976, a three-judge Federal District Court in the District of Massachusetts, after dismissing the Commonwealth of Massachusetts and its Division of Civil Service as parties defendant, entered a judgment for Helen B. Feeney against the Massachusetts Director of Civil Service (now designated "Personnel Administrator of the Commonwealth") and members of the Massachusetts Civil Service Commission, declaring unconstitutional the Massachusetts Veterans' Preference, Mass. Gen. Laws c. 31, § 23, and enjoining its enforcement by said state officers. *Feeney v. Commonwealth of Massachusetts, et al.*, — F. Supp. — (Mass. 1976).

The Attorney General for the Commonwealth, who appeared for all parties defendant in the District Court, has filed a Jurisdictional Statement in this Court stating, at 1-2, that the same is filed "on behalf of the Personnel Administrator of the Commonwealth and the Massachusetts Civil Service Commission," the state officers against whom the District Court judgment was entered. However, the Personnel Administrator of the Commonwealth and the members of the Civil Service Commission have advised the Clerk of this Court, by letter of September 1, 1976, that "the appeal

is without our authorization," that "each of us informed the Attorney General of our request that this matter not be appealed," and that "we request that the Court dismiss the appeal." A stipulation filed in the District Court dated June 21, 1976, signed by the Attorney General and the attorney for appellee, confirms these statements in the letter, and states further that the Governor of the Commonwealth has also requested the Attorney General not to prosecute an appeal.

The Attorney General, on October 8, 1976, filed a brief in this Court supporting his authority under state law to docket the appeal.

It therefore appears that there are involved in the proceeding before this Court questions of Massachusetts law which may be determinative of such cause, with respect to which there seem to be no clearly controlling precedents in the decisions of the Massachusetts Supreme Judicial Court. Accordingly, this Court desires to certify to the Supreme Judicial Court of Massachusetts, pursuant to Rule 3:21 of its Rules, the following question:

Question Certified

Under the circumstances herein presented, does Massachusetts law authorize the Attorney General of the Commonwealth to prosecute an appeal to this Court from the judgment of the District Court without the consent and over the expressed objections of the state officers against whom the judgment of the District Court was entered?

MR. JUSTICE BLACKMUN would dismiss the appeal for want of jurisdiction.

Supreme Court of the United States.

COMMONWEALTH OF MASSACHUSETTS ET AL.

v.

HELEN B. FEENEY.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS.

October 11, 1977.

No. 76-265. MASSACHUSETTS ET AL. v. FEENEY. Appeal from D.C. Mass. Motion of John R. Buckley, Secretary of Administration and Finance of Massachusetts, for leave to file a brief as *amicus curiae* granted. Judgment vacated and case remanded for further consideration in light of *Washington v. Davis*, 426 U.S. 229 (1976). MR. JUSTICE BRENNAN, MR. JUSTICE MARSHALL, and MR. JUSTICE POWELL would note probable jurisdiction and set case for oral argument. Reported below: 415 F. Supp. 485.

**United States District Court
for the District of Massachusetts.**

No. 75-1991-T.

[Title omitted in printing.]

**Plaintiff's Motion for Leave to Amend
and Supplement the Complaint.**

Pursuant to Rules 15(a) and (d) of the Federal Rules of Civil Procedure, the plaintiff Helen B. Feeney moves for leave to amend and supplement the Complaint herein by adding the following Count which is asserted under principles of pendent jurisdiction:

COUNT IV

46. The plaintiff reasserts the averments of Paragraphs 1 through 35, inclusive, of this Complaint with the same force and effect as if herein set forth and repeated in full.

47. The Veterans' Preference Statute and the rules and regulations of the Division implementing said Statute and their enforcement by the defendants have deprived and continue to deprive the plaintiff of the equal protection of the laws and of due process of law in violation of Article I of Part the First of the Massachusetts Constitution, as most recently amended in November, 1976 by adoption of the Equal Rights Amendment.

48. Plaintiff has no plain and adequate remedy at law for said continuing violation of her rights under Article I of Part the First of the Massachusetts Constitution.

A memorandum in support of this motion is filed herewith.

By her attorneys,

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November 28, 1977

**United States District Court
for the District of Massachusetts.**

No. 75-1991-T.

[Title omitted in printing.]

**Defendants' Opposition to Plaintiff's Motion for Leave
to Amend and Supplement the Complaint.**

Defendants hereby oppose Plaintiff's Motion for Leave to Amend and Supplement the Complaint which seeks, under principles of pendent jurisdiction, to add a count alleging a violation of the recently-enacted "Equal Rights Amendment" to the Massachusetts Constitution. Mass. Const. Pt. I, Art. I. The Defendants oppose the Motion because it is not in the true interests of justice and is inconsistent with the underlying purpose of Fed. R. Civ. P. 15. The reasons for Defendants' opposition, which are stated with additional particularity in the accompanying memorandum, also include:

1. The filing of the motion was unduly delayed;
2. The proposed amendment does not state a cognizable claim since the Equal Rights Amendment became effective after the operation of the challenged statute was suspended; and
3. Allowance of the motion would result in undue prejudice to the Defendants and to those individuals whose employment preference has been diminished pending the outcome of this case. Allowance of the motion could trigger the abstention doctrine, result in the certification of questions to the Supreme Judicial Court, impede review by the United States Supreme Court on appeal and otherwise delay final adjudication on the merits of Plaintiff's claim.

For all these reasons and those contained in the accompanying memorandum, Plaintiff's motion should be denied.

By their attorney,

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DATED: November 30, 1977

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

HELEN B. FEENEY

v.

CIVIL ACTION
No. 75-1991-T

THE COMMONWEALTH OF
MASSACHUSETTS, ET AL.

Judgment and Order.

May 3, 1978.

TAURO, D.J.

1. Judgment is entered in favor of the Commonwealth of Massachusetts and the Division of Civil Service in *Feeney v. Commonwealth*, CA 75-1991-T, because these defendants are not "persons" within the meaning of 42 U.S.C. § 1983. *Anthony v. Commonwealth*, 415 F. Supp. 485, 487, n. 2 (D. Mass. 1976).

2. Judgment is entered in favor of the plaintiff Feeney in No. 75-1991-T, against the Massachusetts Director of Civil Service and the members of the Massachusetts Civil Service Commission on the ground that Mass. Gen. Laws ch. 31, § 23 (1971) (The Massachusetts Veterans' Preference Act) is unconstitutional in that it operates to deny female civil service applicants equal protection of the laws.

It is ORDERED that:

(a) The Massachusetts Director of Civil Service and the members of the Massachusetts Civil Service Commission are

hereby permanently enjoined from utilizing Mass. Gen. Laws ch. 31, § 23 (1971) in any future selection of persons to fill civil service positions with the Commonwealth.

(b) This injunction shall have no effect upon the continued status of any individual in a permanent civil service position who holds that position on the date of this injunction.

LEVIN H. CAMPBELL,
Circuit Judge.
JOSEPH L. TAURO,
District Judge.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

HELEN B. FEENEY,
PLAINTIFF,

v.

CA 75-1991-T

COMMONWEALTH OF
MASSACHUSETTS, ET AL.
DEFENDANTS

Opinion.

May 3, 1978.

TAURO, D.J.

By order of remand from the Supreme Court, we have been instructed to reconsider our decision in *Anthony v. Common-*

wealth,¹ 415 F. Supp. 485 (D. Mass. 1976), in light of the Court's subsequent decision in *Washington v. Davis*, 426 U.S. 229 (1976).² After further briefing and oral argument, we conclude that *Davis* does not require us to alter our original holding. To the contrary, we have determined that both *Davis* and the Court's later opinion in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), support our conclusion that the challenged Massachusetts Veterans' Preference statute³ deprives women

¹ This case, originally entitled *Anthony v. Commonwealth*, was brought as two separate actions under 42 U.S.C. § 1983 by four Massachusetts women challenging the Veterans' Preference statute, Mass. Gen. Laws ch. 31, § 23. The plaintiffs in *Anthony* were three non-veteran women, admitted to the Massachusetts bar, who had applied for positions as counsel to state agencies. Plaintiff Feeney, in a separate suit, sought an administrative post in the civil service. The two suits were consolidated. We determined that the claims brought by the plaintiffs in *Anthony* were rendered moot by passage in April, 1975 of Mass. Gen. Laws ch. 31, § 5, which removed all appointments for state and municipal legal positions from the provisions of the state civil service law. We considered plaintiff Feeney's claim on the merits. Our decision in the *Feeney* case is the subject of the court's remand order presently before us.

² Also before the court is plaintiff's motion to amend the complaint to add a cause of action challenging the Veterans' Preference Act as violative of the Equal Rights Amendment to the state constitution, ratified in November, 1976, several months after our original opinion had issued. Plaintiff's motion raises several important issues, namely whether an amendment to the complaint would be within the scope of the Court's order of remand, whether the doctrine of abstention would require us to certify plaintiff's claim to the Massachusetts Supreme Judicial Court, and whether we would be obliged to consider the state claim prior to reaching the federal constitutional issue in this case.

Plaintiff asserts as a basis for the motion that, in the event her federal claims are rejected, she may be estopped from bringing a separate suit based on the state claim. At oral argument, however, the Commonwealth stipulated that it would not seek to raise the defense of estoppel with respect to plaintiff's state claim should there be a subsequent proceeding in the state court. Having in mind the Commonwealth's stipulation, we deny plaintiff's motion to amend. Fed. R. Civ. P. 15(a).

³ Mass. Gen. Laws ch. 31, § 23.

of equal protection of the laws and, therefore, is unconstitutional.⁴

I

THE ANTHONY DECISION.

The broad issues in this case are treated extensively in our prior opinion. 415 F. Supp. 485. In order to put in context our reconsideration of *Anthony*, however, it is useful to outline briefly some of its major points.

The statutory scheme challenged in *Anthony* established a formula that permanently prevents a non-veteran from achieving a place on the civil service appointment list ahead of a veteran, regardless of comparative test scores.⁵ We pointed

⁴ In *Anthony*, we enjoined enforcement of Massachusetts Veterans' preference statute, Mass. Gen. Laws ch. 31, § 23, because it deprived women of equal protection under the law. The state subsequently filed a motion for relief from judgment, urging reconsideration in light of *Davis*. That motion, along with a motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b)(6), was denied, although a stay pending appeal was granted. The stay was rendered moot by the passage of an interim statute, Stat. 1976, c. 200, which suspends operation of the challenged statute pending the outcome of this case on appeal. The interim statute is presently in effect and provides a modified point preference for veterans.

⁵ An applicant who passes the civil service written examination becomes an eligible and is placed on an "eligible list" under the following ranking formula:

1. Disabled veterans in order of their composite scores.
2. Other veterans in order of their composite scores.
3. Widows and widowed mothers of veterans in order of their composite scores.
4. All other eligibles in order of their composite scores.

Mass. Gen. Laws ch. 31, § 23; *Anthony v. Commonwealth*, 415 F. Supp. 485, 488 (D. Mass. 1976).

The full statutory procedure by which eligible applicants are certified and selected is set forth in our original opinion. 415 F. Supp. at 488-490.

out that "(a)s a practical matter . . . the Veterans' Preference replaces testing as the criterion for determining which eligibles will be placed at the top of the list." 415 F. Supp. at 489.

The selection formula, geared as it is to veteran status, is necessarily controlled by federal military proscriptions limiting the eligibility of women for participation in the military. Long-standing federal policy limited to 2% the number of women who could participate in the armed forces. *Anthony v. Commonwealth*, *supra*, at 489. Traditionally, enlistment and appointment criteria have been more restrictive for women than for men.⁶ An inevitable consequence of this federal policy limiting women's participation in the military is that only 2% of Massachusetts veterans are women. *Id.*

(T)he practical consequence of the operation of these federal military proscriptions, in combination with the Veterans' Preference formula is inescapable. Few women will ever become veterans so as to qualify for the preference; and so, few, if any, women will ever achieve a top position on a civil service eligibility list, for other than positions traditionally held by women.

Id. at 490.

We recognized that the prime legislative motive of the challenged statute, that of rewarding public service in the military was worthy. *Id.* at 496. But we also observed that,

⁶A complete summary of the limitations placed on women seeking entry into the armed forces is set forth in our earlier opinion. 415 F. Supp. at 489-90.

(i)t is not enough that the prime objective of the Veterans' Preference statute . . . is legitimate and rational. The means chosen by the state to achieve this objective must also be legitimate and rational.

Id. at 497.

We determined that the means chosen by the Massachusetts Legislature to reward veterans were not grounded "on a convincing factual rationale." *Id.* at 495. We pointed out that the challenged statutory formula was not an effort by the state to set priorities for finite resources; that there were less drastic alternatives available to the state, such as a point system; and that any argument attempting to relate the challenged formula to job performance or qualification was "specious." *Id.* at 495-499. We concluded that the formula relegated job-related criteria and professional qualifications to a secondary position. *Id.* at 497.

Moreover, we emphasized that the challenged preference was absolute and permanent. No time limit was imposed or attempt made "to tailor its use to those who have shortly returned to civilian life." *Id.* at 499. Such a broad-brush approach may be administratively convenient, but mere administrative convenience is not a legitimate basis for benefiting one identifiable class at the expense of another. *Reed v. Reed*, 404 U.S. 71 (1971).

Although the Veterans' Preference statute was not designed for the sole purpose of subordinating women, *Anthony v. Commonwealth*, *supra*, at 495, its clear intent was to benefit veterans even at the expense of women. As we stated,

(T)he formula's impact, triggered by decades of restrictive federal enlistment regulations, makes the operation of the Veterans' Preference in Massachusetts anything but

an impartial, neutral policy of selection, with merely an incidental effect on the opportunities for women.

Id. at 495. Rather, we found the preference formula to be

a deliberate, conscious attempt on the part of the state to aid one clearly identifiable group of its citizens, those who qualify as veterans, . . . at the absolute and permanent disadvantage of another clearly identifiable group, Massachusetts women.

Id. at 496.

The consequences of adopting a permanent absolute preference formula tied to federal enlistment restrictions were more than predictable, they were inevitable.

II

THE IMPACT OF DAVIS ON ANTHONY.

At issue in *Davis* was a pre-employment literacy test used by the District of Columbia police department. The district court rejected plaintiffs' allegation that the test was "culturally slanted" to favor whites. It determined further that the test was "reasonably and directly" related to the requirements of the police recruit training program, although unrelated to actual job performance. 426 U.S. at 235. The D.C. Circuit reversed, holding irrelevant the failure of plaintiffs to allege and prove discriminatory intent in the exam's design and administration. It determined that the disproportionate percentage of blacks who had failed the exam sufficed to establish a constitutional violation. *Id.* at 236-37.

In reversing the court of appeals, the Supreme Court stated that claims of invidious discrimination under the fifth or fourteenth amendments require proof of a discriminatory purpose. A facially neutral statute may not be deemed vulnerable to equal protection challenge solely because it has a disproportionate impact. That Court emphasized that discriminatory intent need not be "express or appear on the face of the statute." 426 U.S. at 241, but that consideration must be given to the totality of the circumstances. Disproportionate impact is one such highly relevant circumstance we must consider.

Necessarily, an invidious discriminatory purpose may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one race than another. It is also not infrequently true that the discriminatory impact . . . may for all practical purposes demonstrate unconstitutionality because in various circumstances the discrimination is very difficult to explain on nonracial grounds. Nevertheless, we have not held that a law, neutral on its face and serving ends otherwise within the power of government to pursue, is invalid under the Equal Protection Clause simply because it may affect a greater proportion of one race than of another. Disproportionate impact is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution.

426 U.S. at 242. See also *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266 (1977). This point was amplified by Justice Stevens in his concurring opinion.

Frequently the most probative evidence of intent will be objective evidence of what actually happened rather than evidence describing the subjective state of mind of the actor. For normally the actor is presumed to have intended the natural consequences of his deeds. This is particularly true in the case of governmental action which is frequently the product of compromise, of collective decisionmaking, and of mixed motivation.

Id. at 252 (Stevens, J., concurring). See also *Dayton Board of Education v. Brinkman*, 97 S. Ct. 2766 (1977) (Stevens, J., concurring).

A major factor distinguishing *Davis* from the case at hand is the nature of the selection procedure challenged in each case. Although the plaintiffs in *Davis* originally challenged the entire District of Columbia police recruitment scheme, the sole issue before the Supreme Court was the validity of the written civil service test. *Washington v. Davis*, *supra*, at 233-35.

The district court in *Davis* determined that the challenged test was neutral on its face. *Id.* at 235. This determination apparently provided a basis for the Court's statement that,

A rule that a statute designed to serve neutral ends is nevertheless invalid, absent compelling justification, if in practice it benefits or burdens one race more than another would be far reaching and would raise serious questions about, and perhaps invalidate, a whole range of tax, welfare, public service, regulatory, and licensing statutes that may be more burdensome to the poor and to the average black than to the more affluent white

Id. at 248. (Footnotes omitted.)

The factual underpinning in this case is entirely different. As we have already emphasized, the Veterans' Preference statute is "anything but an impartial, neutral policy of selection with merely an incidental effect on the opportunities for women." 415 F. Supp. at 495. Here, plaintiff does not challenge the civil service written examination but, rather, the overriding ranking formula that mandates an absolute job preference to veterans over non-veterans, regardless of comparative test scores. This preference formula effectively "replaces testing as the criterion for determining which eligibles will be placed at the top of the list." *Id.* at 489.

In analyzing the "totality of the relevant facts" so as to determine the legislative intent underlying the challenged statute, we must of necessity examine official acts or policies to determine whether they had the natural, foreseeable and inevitable effect of producing a discriminatory impact.⁷ See

⁷ Defendants assert that a "foreseeability test" violates the mandate in *Davis*. Specifically, defendants rely on the Court's remand in *Austin Independent School District v. United States*, 429 U.S. 990 (1977), for the proposition that "inferences about intent flowing from arguably foreseeable consequences is not a substitute" for inquiry into specific intent. Defendants' Reply Brief at 7.

An order of remand is ambiguous in import. Justice Powell's concurrence suggests the remand in *Austin* may have been prompted by the breadth of the remedial relief ordered. 429 U.S. at 991, 992. See also *School District of Omaha v. United States*, 97 S. Ct. 2905 (1977); *Dayton Board of Education v. Brinkman*, 97 S. Ct. 2766 (1977). We will not presume that the Court utilized a remand order in *Austin* to abrogate the basic precept that a person is deemed to intend the natural, probable and foreseeable consequences of his actions. Nothing in *Davis* would indicate rejection in equal protection cases of this long-standing principle. See *Arthur v. Nyquist*, 429 F. Supp. 206, 210 (W.D. N.Y. 1977). Indeed, the Court recognized the difficulty of direct proof of intent, stating that the discriminatory purpose need not be express or appear on the face of the statute. 426 U.S. at 241. Moreover, Justice Stevens' concurrence suggests that this precept has continued vitality. *Id.* at 253 (Stevens, J., concurring).

Washington v. Davis, supra, at 253 (Stevens, J., concurring); *N.A.A.C.P. v. Lansing Board of Education*, 559 F.2d 1042 (6th Cir. 1977).

The legislature was, at the least, chargeable with knowledge of the long-standing federal regulations limiting opportunities for women in the military,⁸ and the inevitable discriminatory consequences produced by their application to the challenged formula.⁹

Defendants cite two cases where the "foreseeability test" was considered and rejected. *United States v. City of Chicago*, 549 F.2d 415 (7th Cir. 1977); *Guardians Ass'n of the New York City Police Dep't v. Civil Service Comm'n*, 431 F. Supp. 526 (S.D. N.Y. 1977). These cases are clearly distinguishable. In both, the challenged procedures were found to be neutral. Here, we have determined the challenged statutory scheme to be "anything but an impartial, neutral policy of selection." 415 F. Supp. at 495.

We do not hold that in all cases a plaintiff may attempt to circumvent the intent requirement of *Davis* solely by presenting proof of foreseeability of impact. We are dealing here with a statute that is not facially neutral. Moreover, it has an inevitable discriminatory impact on a clearly identifiable class. These are relevant facts to consider in determining underlying legislative intent.

⁸See *Anthony v. Commonwealth*, 415 F. Supp. 485, 489-90 (D. Mass. 1976).

⁹The legislative history does suggest an awareness on the part of the lawmakers of the predictable discriminatory impact the preference formula would have on women. Until 1971, most of the veterans' preference statutes and civil service regulations included provisions approving the practice of requisitioning only female applicants for certain positions. Jobs for which women were requisitioned were exempted from operation of the statute. See Mass. Gen. Laws ch. 31, § 23 (1966); Acts 1922, ch. 463; Acts. 1919, ch. 150, § 2; Acts 1895, ch. 501, § 2. Although the 1895 statute on its face appears to exempt women from the operation of the veterans' preference with respect to all available jobs, the prior and subsequent legislative history suggest that the statutory language was merely consistent with the pre-existing rule permitting single sex lists. See Civil Service Rule XIX(3) promulgated pursuant to Stat. 1884, Ch. 320. If a request were made for a female applicant, the Commissioner had no authority to certify a male for the position, regardless of his veteran status. Op. Att'y Gen. 68 (1941). In 1971, the legislature repealed this statutory exemption. Acts 1971, ch. 219.

In practical application, the combination of federal military enrollment regulations with the Veterans' Preference is a one-two punch that absolutely and permanently forecloses, on average, 98% of this state's women from obtaining significant civil service appointments.

Anthony v. Commonwealth, supra, at 498.

We must also assume that the legislature was cognizant of the fact that the stringent entry criteria embodied in the federal military regulations bore "no demonstrable relation to an individual's fitness for civilian public service." *Id.* at 498-99. We realize that a due process or equal protection claim is not to be judged by the standards applicable under Title VII. *Washington v. Davis, supra*, at 239. Our holding that the Massachusetts civil service selection process is unconstitutional is not based solely on the fact that it bears no relationship to job performance. But the fact that the criteria set forth in the challenged statutory formula fail to measure job performance is one additional circumstance bearing on the question of discriminatory intent.¹⁰

Statistics show that the exemption operated only to preserve stereotypically "female" clerical jobs for women. See 415 F. Supp. at 488. Contrary to defendants' assertion, elimination of this exception did not remove the last vestiges of sex discrimination from the statutory scheme; it only served to make all positions in the civil service subject to the overriding preference formula. See Comment *Veterans' Public Employment Preference as Sex Discrimination*, 90 Harv. L. Rev. 805, 812 (1977); Fleming and Shanor, *Veterans' Preferences in Public Employment: Unconstitutional Gender Discrimination?*, 26 Emory L.J. 13, 53 (1977).

¹⁰It is significant to note that the Court in *Davis* adopted the finding of the district court that the challenged test "directly related to the requirements of the police training program." 426 U.S. at 235.

Finally, the statistical evidence presented by plaintiff demonstrates a pattern of exclusion of women from the civil service.¹¹ At the time the suit was filed, only 2% of Massachusetts veterans were women.¹² Although 43% of the civil service appointees were women, a large percentage of them served in lower grade positions for which men traditionally did not apply. Of the women appointed over a ten year period, from July 1, 1963 through June 30, 1973, only 1.8% were veterans, while 54% of the men had veteran status. 415 F. Supp. at 488.

The facts demonstrate that this absolute job preference formula had a devastating impact on the plaintiff's attempts to advance her position in the civil service. In 1971, she received the second highest test score for the position of Assistant Secretary to the Board of Dental Examiners, but was ranked sixth on the list of eligibles, behind five male veterans, four of whom had received lower scores. She was not certified and a male veteran with a lower examination score was appointed.

Two years later when she applied for another administrative post, plaintiff received the third highest mark on the exam, but only ranked fourteenth on the list, behind twelve

¹¹ Plaintiff argues that this statistical presentation of itself creates a presumption of purposeful discrimination, thereby shifting the burden of proof to defendants. See *Castaneda v. Partida*, 430 U.S. 482 (1977); *Washington v. Davis*, 426 U.S. 229, 241 (1976). In view of our subsidiary and ultimate findings and conclusions, based on an uncontradicted record, concerning the existence of discriminatory intent, we conclude that plaintiff has met her burden of proof without the benefit of a presumption and, therefore, find it unnecessary to address this procedural issue.

¹² At oral argument the parties stated that there is no reason to revise the agreed statement of facts submitted in *Anthony*. Moreover, there is no reason to assume that the facts have changed measurably, inasmuch as the challenged statute has not been in effect due to passage of the interim point preference statute. See n. 2, *supra*.

male veterans, eleven of whom had lower test scores. Again, plaintiff was not certified for appointment. The third time she applied for an administrative position, plaintiff received a score that would have placed her within the top twenty places on the eligibles list. By operation of the formula, however, she was ranked 70th on the list, behind 50 male veterans with lower test scores. *Id.* at 497-498.

These figures, and others cited in our earlier opinion,¹³ show a clear pattern of exclusion of women from competitive civil service positions. Unlike the defendants in *Davis*, the Commonwealth has not made any showing of affirmative efforts to recruit women, or of a recent rise in the percentage of women appointed to competitive civil service positions. In *Davis* the district court found that 44% of the new police recruits over the preceding three years had been black, a figure roughly approximating the proportion of blacks in the area. That court also found that the Department had "systematically and affirmatively sought to enroll black officers, many of whom passed the test but failed to report for duty." 426 U.S. at 236.

The situation here is in marked contrast. The Commonwealth's proffered 57-43 ratio of men to women is misleading. A large percentage of female positions for which males traditionally have not applied. Some women received their appointments through a now defunct practice by which the appointing authorities would requisition only women applicants for certain jobs. 415 F. Supp. at 488.¹⁴ While the officials in *Davis* sought "systematically" to recruit minorities who had passed the preemployment test, the defendants here have demonstrated no attempt to mitigate the permanent and absolute impact on women of a formula that systematically excludes them from desirable public service positions even

¹³ See 415 F. Supp. at 488, 491-92, 497-98.

¹⁴ See n. 10, *supra*.

though they have demonstrated their qualifications by passing a written exam.¹⁵

The Commonwealth argues that,

historical analysis makes it clear that the enactment of this legislation by the General Court was in no way motivated by a desire to discriminate against women. Rather, the legislative motivations for Massachusetts Veterans' Preference statutes were: (1) to reward those who have sacrificed in the service of their country; (2) to assist veterans in their readjustment to civilian life; and (3) to encourage patriotic service.

Brief for Defendants at 24, 25.

We disagree. It is clear that the Commonwealth's motive was to benefit its veterans. Equally clear, however, is that its intent was to achieve that purpose by subordinating employment opportunities of its women. The course of action chosen by the Commonwealth had the inevitable consequence of discriminating against the women of this state. See *Anthony v. Commonwealth*, *supra*, at 496. The fact that the Commonwealth had a salutary motive does not justify its intention to realize that end by disadvantaging its women.

Davis does not require a plaintiff to prove that the challenged action rested solely on racially discriminatory

¹⁵ We recognize that "(m)ere absence of recruitment efforts, by itself is not equivalent to an intent to discriminate," *Guardians Assoc. of the New York City Police Dept. v. Civil Service Comm'n*, 431 F. Supp. 526, 535 (S.D. N.Y. 1977). We emphasize that our finding of discriminatory intent is not based solely on the Commonwealth's failure to show affirmative efforts to recruit women. This is merely one of the factors we rely on in considering the totality of the circumstances.

purposes. Rarely can it be said that a legislature or administrative body operating under a broad mandate made a decision solely by a single concern, or even that a particular purpose was the "dominant" or "primary" one.

Village of Arlington Heights v. Metropolitan Development Housing Corp., *supra*, at 265. (Footnotes omitted.)

The fact that there are less drastic alternatives available to the state to achieve its purpose of aiding veterans,¹⁶ underscores our conclusion that the absolute and permanent preference adopted by the Commonwealth resulted from improper evaluation of competing considerations. By intentionally sacrificing the career opportunities of its women in order to benefit veterans, the Commonwealth made a constitutionally impermissible value judgment.

We reaffirm our holding that the Massachusetts Veterans' Preference Act denies equal protection under the law and, therefore, is unconstitutional.

JOSEPH L. TAURO,
District Judge.

CAMPBELL, *Circuit Judge* (concurring). This is not an easy case to deal with under *Washington v. Davis*, 426 U.S. 229 (1977). On the other hand, there can be no question about the unequal impact of this law: practically speaking, it permanently shuts off whole areas of state employment to women. On the other hand, as Judge Murray points out in his dissent,

¹⁶ *Anthony v. Commonwealth*, 415 F. Supp. 485, 499 (D. Mass. 1976).

a strong initial case can be made for the proposition that it is "neutral on its face," and not motivated in any ordinary sense by a discriminatory intent.* Arguably, therefore, the challenged statute is the kind of law which, notwithstanding its widespread impact on women's employment opportunities, should be upheld as constitutional. The thrust of *Washington v. Davis* and related decisions such as *Village of Arlington Heights v. Metropolitan Housing Corporation*, 429 U.S. 252 (1977), is that we must accept that well-intentioned programs may have uneven side effects: society is too complicated for every discriminatory consequence to disqualify legitimate policies. Welfare programs, for example, foreseeably benefit minority groups disproportionately, just as tax deductions do whites. Examinations (as in *Washington v. Davis*) designed reasonably to weed out those unqualified for police work, may eliminate minority applicants more than others. Town and city planning laws, designed to improve community life, may because of separate economic factors, create barriers to minorities. Society would soon be in a state of paralysis if it could adopt only laws having strictly equal impact upon all groups and classes within it.

But while I fully recognize not only that *Washington v. Davis* is the law of the land but also that its principle reflects an essential limitation upon the sweep of the equal protection clause, I do not believe that the Massachusetts veterans prefer-

* The statute can be called facially neutral in that it does not make a division based strictly on sex. The law provides employment preference for veterans, not males. While veterans are 98% male, a few veterans are female, and there are many males who are not veterans.

The statute can likewise be said not to be based on a discriminatory intent, in the sense that no one thinks that it was enacted as a pretext to harm women. While the harm to female employment opportunities is extensive and, given the statutory scheme, inevitable, it was not this harm which prompted passage of the law, but rather the entirely justifiable desire to aid individuals who had served their country, often at great sacrifice.

ence law actually falls within its ambit. This, as Judge Tauro convincingly demonstrates, is no ordinary statute having merely an incidental unequal impact. It is a statute which goes a long way towards making upper level state employment a male preserve. Upon close inspection, the seeming "neutrality" of the veterans preference law, and even its seeming absence of intentional discrimination, are both open to serious question.

I turn first to the matter of its neutrality. While the dividing line between veterans and non-veterans is not the same as the dividing line between men and women, the ineluctable effect of this law is to confer an absolute priority upon a class that is 98% male in a sphere of employment where women, generally, should have the same access as men. What the law does, is to take a group which has, for unique reasons, been selected almost exclusively from the male population (military service being what it was and is), and grant it an absolute preference in an entirely different sphere of public employment where male preference is not only not the rule but is constitutionally impermissible. The law may be "facially neutral" in the limited sense that it is not based overtly on selection by sex, but since the preferred class is 98% male the effect is virtually the same as if it were.

The discriminatory impact in *Washington v. Davis* was far less inevitable: the selection device at issue, a police examination, did not mandate the recruitment of a class made up, overwhelmingly, of whites. While past experience might have indicated that proportionately fewer blacks than whites would pass the neutral examination, this was not an inevitable outcome: a black who was determined to succeed might by dint of extra effort make up for past disadvantages; coaching and recruiting measures, as well as educational and economic improvements, might, over the years, increase the number of successful blacks. No such opportunity exists here for women.

The veterans preference law prefers an already established class which, as a matter of historical fact, is 98% male. Because only persons who have served during wartime are eligible for the preference, the class cannot be expanded in the near future to include more women. Thus its "neutrality" is at best skin-deep. The law was sexually skewed from the outset, since the exclusionary effect upon women was not merely predictable but absolutely inescapable and "built-in".

This same inevitability of exclusionary impact upon women also undermines the argument of no discriminatory intent. There is a difference between goals and intent. Conceding, as we all must, that the goal here was to benefit the veteran, there is no reason to absolve the legislature from awareness that the means chosen to achieve this goal would freeze women out of all those state jobs actively sought by men. To be sure, the legislature did not wish to harm women. But the cutting-off of women's opportunities was an inevitable concomitant of the chosen scheme — as inevitable as the proposition that if tails is up, heads must be down. Where a law's consequences are *that* inevitable, can they meaningfully be described as unintended? Doubtless the impact on women, if considered at all, was regarded as an acceptable "cost" of aiding veterans. But may society properly elect to aid veterans or any other group at the cost of abolishing equal employment opportunities in a major segment of public employment? In my view, the answer is "no".

This is not to say that society may not bestow benefits upon veterans. But I think it may not construct a system of absolute preference which makes it virtually impossible for a woman, no matter how talented, to obtain a state job that is also of interest to males. Such a system is fundamentally different from the conferring upon veterans of financial benefits to which all taxpayers contribute, or from the giving to them of some degree of preference in government employment, as

under a point system, as a *quid pro quo* for time lost in military service. The latter measures do not impose unfairly upon one segment of our society; the instant law, in contrast, forces women to pay a disproportionate share of the cost of benefiting veterans by sacrificing their own chance to be selected for state employment.

Thus while it is concededly a close question whether the Massachusetts veterans preference is to be regarded as the sort of neutral classification with unintended effects absolved by *Washington v. Davis*, I feel on balance that it is not. Rather the law is more realistically viewed as substantively non-neutral. The destruction of normal female opportunities in the state employment system is too evident a consequence of the super-imposition of veterans as an absolutely preferred class upon that system. If this can be done constitutionally, the equal protection clause of the Constitution is, in this area of employment, little more than a hollow pretense, whatever it may remain in theory. As I think the unique problem posed in this case is distinguishable from any contemplated in *Washington v. Davis*, I adhere to our former judgment.

LEVIN H. CAMPBELL,
U.S. Circuit Judge.

MURRAY, Senior District Judge (Dissenting). *Washington v. Davis*, 426 U.S. 229, 239, 242 (1977) holds:

. . . [O]ur cases have not embraced the proposition that a law or other official act, without regard to whether it reflects a racially discriminatory purpose, is unconstitutional *solely* because it has a racially disproportionate impact. [Emphasis in original.]

.

. . . [W]e have not held that a law, neutral on its face and serving ends otherwise within the power of government to pursue, is invalid under the Equal Protection Clause simply because it may affect a greater proportion of one race than of another.

The majority today determines that *Washington v. Davis*, *supra*, supports their previous holding that the Massachusetts Veterans' Preference statute, Mass. Gen. Laws ch. 31, § 23, deprives women of equal protection of the laws in violation of the Fourteenth Amendment in all areas of civil service employment in the Commonwealth. Although recognizing that "[a] facially neutral statute may not be deemed vulnerable to equal protection challenge solely because it has a disproportionate impact", *ante* at 8, Judge Tauro reaches this determination by finding that "[w]e are dealing here with a statute that is not facially neutral", *ante* at 13, fn. 7, and that it is the Commonwealth's intent to achieve the purpose of benefiting its veterans "by subordinating employment opportunities of its women". *Ante* at 20. Judge Campbell concurs in the judgment of unconstitutionality, finding that the inevitability and degree of disproportionate effect make the statute non-neutral and that the inevitability of effect suggests discriminatory intent. With respect, I disagree that these findings and the result reached are demonstrably tenable.

I

The Veterans' Preference statute is not on its face gender-based. *Anthony v. Commonwealth of Massachusetts*, 415 F. Supp. 485, 501 (1976) (Campbell, C.J., concurring). Clearly the statutory "division between veterans and non-veterans is not drawn along sex lines and does not provide for dissimilar

treatment for similarly situated men and women. On its face the statute is neutral . . .". *Id.* at 503 (Murray, J., dissenting). Most persons favored by the statutory preference are males, although a substantial number of those not so favored are also males. Non-veteran women in larger numbers share with non-veteran men the disfavor of the statute, but a number of those aided by the statute indeed are women. The statute explicitly includes women in its requirement for service during time of war, but not combat duty. Mass. Gen. Laws ch. 4, § 7, cl. 43; ch. 31, § 21; 1958 Op. Atty. Gen., 25-26. Although in operation it favors males in greater proportion than females for the higher civil service positions,¹ the statutory classification has not been shown to be a mere pretext to accomplish the purpose of invidiously discriminating against women. See *Geduldig v. Aiello*, 417 U.S. 484 (1974); *General Electric Co. v. Gilbert*, 429 U.S. 125 (1976). Moreover, it is not disputed that the statutory preference was not enacted for the purpose of disqualifying women from receiving civil service appointments. *Anthony v. Commonwealth of Massachusetts*, *supra* at 495.

The attempted distinction between the test in *Davis* and the statute here is totally unconvincing: one is no more neutral than the other. In each case the classification is facially neutral, and in operation the effects are uneven; the only difference is that the statute here has a weightier impact on the

¹ Unequal treatment of plaintiff's interest in the opportunity for public employment under a statute serving ends otherwise within the power of the state to pursue, violates no fundamental interest guaranteed to plaintiff by the federal constitution. *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307 (1976). Since the statute here is neutral on its face, and since it is undisputed that the statute was not enacted to harm women, the statutory scheme to benefit veteran men and women in the area of public employment to the disadvantage of non-veteran men and non-veteran women does not offend the equal protection clause of the Fourteenth Amendment.

relevant group, and impact alone is not determinative, *Washington v. Davis*, *supra*, at 239.²

II

In *Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252, 264-266 (1977), the Court said:

Our decision last Term in *Washington v. Davis*, 426 U.S. 229 (1976), made it clear that official action will not be held unconstitutional solely because it results in a racially disproportionate impact. "Disproportionate impact is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination." *Id.*, at 242. *Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause . . .* [Emphasis supplied.]

. . . [I]t is because legislators . . . are properly concerned with balancing numerous competing considerations that courts refrain from reviewing the merits of their decisions, absent a showing of arbitrariness or irrationality. But racial discrimination is not just another competing consideration. When there is a *proof that a discriminatory purpose has been a motivating factor in the decision*, this judicial deference is no longer justified. [Emphasis supplied.]

The record before the court, to the extent that it provides direct and circumstantial evidence of intent, does not show,

²Judge Campbell states this result is an "unescapable and 'built-in'" feature of the law, *ante* at _____. But in weighing his argument that the statute is for that reason, *inter alia*, impermissibly discriminatory against women, it cannot be overlooked that the unfavorable impact of the statute is shared alike by non-veteran women and a large number of non-veteran men.

the operation of the statute and its effect to be a clear pattern, unexplainable on grounds other than an intent to limit the employment opportunities of women. This is so, whether the relevant facts are viewed totally or separately. Conceding the factor of unequal impact and that it was foreseeable, a showing of unconstitutional action has not been made. Even in *Davis* the government officials there might well have foreseen that blacks would not do so well on the test as whites. See *Boston Chapter, N.A.A.C.P. v. Beecher*, 504 F.2d 1017, 1021 (1st Cir. 1974). Awareness on the part of the legislature that disproportionate impact is not enough.³ Awareness, like foreseeability, is not proof of discriminatory intent, and other evidence is required. The legislative history of the statute with its unequal impact on women is clearly explainable as having the purpose of preferring qualified veterans for consideration for civil service jobs.⁴

³See the concurring opinion of Mr. Justice Stewart, joined by Mr. Justice Powell, in *United Jewish Organizations of Williamsburgh, Inc. v. Carey*, 430 U.S. 144, 180 (1977):

That the legislature was aware of race when it drew the district lines might also suggest a discriminatory purpose. Such awareness is not, however, the equivalent of discriminatory intent.

⁴The effect of certain statutory enactments would appear to be protective of women. See St. 1895, c. 501, § 1 and St. 1896, c. 517, § 2. Each sets out details of the preference and concludes: "But nothing herein contained shall be construed to prevent the certification and employment of women." See Opinion of the Justices, 166 Mass. 589, 592-593 (1896). The legislature in 1971 revised the provision allowing single sex requisitions, with the result that the number of "women's" jobs protected from the preference was severely limited, but the purpose of the revision would appear to be the prevention of occupational sex discrimination: the statute allows single sex requisitions only after approval has been obtained from the Massachusetts Commission Against Discrimination. Mass. Gen. Laws ch. 31 § 2A(e). See also G. Blumberg, *De Facto and De Jure Sex Discrimination Under the Equal Protection Clause: A Reconsideration of the Veterans' Preference in Public Employment*, 26 Buff. L. Rev. 3, 38 (1976-77).

The preference statute is not vulnerable to the claim that discriminatory intent may be inferred because there is no relationship between the preference and job performance. In the first place, the contention of no such relationship is open to dispute, see *Feinerman v. Jones*, 356 F. Supp. 252, 260 (M.D. Pa. 1973), but even if that contention were to prevail, it would bear on intent only if job performance were the *only* goal the legislature could serve by means of the preference. That is obviously not the case here, for it is in the national interest that enlistment in the armed service be encouraged, see e.g., H. Rpt. No. 93-857, 93rd Cong., 2d Sess. (1974) (Armed Forces Enlisted Personnel-Bonus Revision Act of 1974), and hiring preferences are well-established means for furthering that purpose. See, e.g., *Anthony v. Commonwealth*, *supra* at 496, 497; 42 U.S.C. § 2000e-11.

The statistical evidence presented by plaintiff provides no support for an inference of a discriminatory purpose. This is an impact argument, and *Arlington Heights* (and *Davis*) requires proof of intent as "a motivating factor". Plaintiff's systematic exclusion argument analogizes the jury-selection cases, but those cases do not apply in the context of this case. *Arlington Heights* pointed out that "[b]ecause of the nature of the jury-selection task, however, we have permitted a finding of constitutional violation even when the statistical pattern does not approach the extremes of *Yick Wo* [v. Hopkins, 118 U.S. 356 (1886)] or *Gomillion* [v. Lightfoot, 364 U.S. 339 (1960)] . . .". 429 U.S. at 266, n.13.⁵ Whatever the exact

⁵The Court may be referring to the difference between an inference of intent from the cumulative impact of a series of administrative determinations and an inference from the impact of a rule promulgated by prior legislative or administrative action, see *Shield Club v. City of Cleveland*, 14 E.P.D. ¶ 7763 (N.D. Oh. 1976); it may be referring to the presumption, more likely in jury cases than in other cases, that the result of selection will be random, see J. Ely, *Legislative and Administrative Motivation in Constitution Law*, 79 Yale L.J. 1205, 1263-66.

focus of the Court in jury-selection cases, the Court makes it clear that even in those cases impact alone is determinative only when it emerges as "a clear pattern, unexplainable on grounds other than race", *Arlington Heights*, *supra* at 266. The facts here do not fit into that mold: it is undisputed that the preference here is based on a determination to help veteran men and women and not non-veterans.

Plaintiff's reliance on *Castaneda v. Partida*, 430 U.S. 482 (1977), which Judge Tauro finds no need to address, *ante* at 16, n.11, is distinguishable from the case before us. In that case statistics were used to show that the number of Mexican-Americans on certain grand juries normally to be expected, had the jurors been chosen randomly, was so much higher than the actual number of Mexican-Americans called that plaintiff had made out a prima facie case of equal protection violation. The statistics were presented in the context of the operation of the "key man" system of jury selection which allows jury commissioners to select jurors from a list on which Spanish surnames are easily identifiable, and the system is thus "susceptible of abuse". 430 U.S. at 497, 484-85, 495. No evidence was presented by the State, and the Court recognized that there would be no constitutional violation were the State to explain the numerical discrepancy on neutral grounds. As pointed out above, the preference statute is clearly explainable as having the purpose of preferring veteran men and women at the expense of non-veteran men and women.

III

The principle applied in tort and criminal actions, that an actor is presumed to intend the natural and foreseeable consequences of his deeds, must yield to the entirely different considerations at work when a federal court is addressing an equal protection challenge to state legislation. Principles of

federalism involve a "recognition of the value of state experimentation with a variety of means for solving social and economic problems", *Anthony, supra* at 502 (Murray, J., dissenting), and considerations of federalism require that an impermissible motive in enacting state legislation be not lightly inferred. See Note, *Developments in the Law: Equal Protection*, 82 Harv. L. Rev. 1065, 1093-94, n.101; A. Bickel, *The Least Dangerous Branch*, 214; P. Brest, *Palmer v. Thompson: An Approach to the Problem of Unconstitutional Legislative Motivation*, 1971 Sup. Ct. Rev. 95, 129-30. Inevitability of effect, even coupled with disproportionate impact, "absent a pattern as stark as that in *Gomillion* or *Yick Wo*" is not evidence of discriminatory purpose or intent.⁶ See *Davis, supra* at 242; *Arlington Heights, supra* at 266. A legislature's choice of preferring veterans implies invidious intent only if it appears inconsistent with expected and valid considerations.⁷

⁶ The heart of Judge Campbell's argument is the following:

To be sure, the legislature did not wish to harm women. But the cutting-off of women's opportunities was an inevitable concomitant of the chosen scheme — as inevitable as the proposition that if tails is up, heads must be down. Where a law's consequences are *that* inevitable, can they meaningfully be described as unintended?

Ante at ____ The answer to his question must be that inevitability of effect is relevant only where it bears on intent, and to find intent as that word is used in *Washington v. Davis* one must find motive. Judge Campbell concedes that "[w]hile the harm to female employment opportunities is extensive and, given the statutory scheme, inevitable, it was not this harm which prompted passage of the law . . .". *Ante* at ____, n. *. Where, as here, a law's consequences were inevitable, but there is no evidence at all that those particular consequences motivated the legislature, they can indeed be described as unintended.

⁷ See P. Brest, *supra*, 1971 Sup. Ct. Rev. at 121-122; Note, *Reading the Mind of the School Board: Segregative Intent and the De Facto/De Jure Distinction*, 86 Yale L.J. 317, 332-43 (1976).

In most hiring situations the difference in the scores of those certified would likely be very little different were the veterans' preference not in effect.⁸ There is here no indication that the legislature departed from usual considerations in enacting the preference. To the extent, however, that the legislature wishes to use civil service hiring practices to favor veterans, any effort to diminish the impact on women by diluting the preference necessarily results in a diminution of the benefit to veterans. Because of this nature of the hiring benefit, use of the "absolute" preference instead of a point preference, like the use of any preference at all, provides no ground for indictment of the legislature's motive.

IV

Since *Washington v. Davis*, three veterans' preference provisions have been subjected to equal protection challenge; all

⁸ For one of the positions applied for by plaintiff, that of Solomon Head Administrative Assistant, the three applicants certified, of whom one would be chosen, had scores of 77.40, 93.28, and 90.20. Without the veterans' preference, the top three scores would have been 94.88, 93.28, and 92.32 (plaintiff). Agreed Statement of Facts (hereinafter "Statement") ¶¶ 12, 13, Exhibits, 2, 4. For another position, that of Administrative Assistant, there were seven positions available. Eleven persons would be certified, Statement ¶ 9, and were the top eleven all to indicate interest, the positions would be filled from a group with scores of 88, 86, 86, 84, 94, 92, 92, 92, 90, 90, and 90. Without the preference, the selections would be from a group with scores of 94, 92, 92, 92, 91, 90, 90, 90, 90, 89, and 89. Statement ¶¶ 16, 17, Exhibit 7. For a third position, Assistant Secretary, Board of Dental Examiners, the top three scores were 89.72, 78.08, and 83.64; without the preference, the top three scores would have been 89.72, 86.68 (plaintiff), and 83.98. Statement ¶ 27, Exhibit 61. That the appointee for this position had a score of 78.08, the lowest of the three certified, indicates that there are other important qualifications besides test scores and thus that there is little reason to believe that the quality of the employee pool is significantly lowered by its containing persons with slightly lower test scores than would be present absent the veterans' preference statute.

three have been upheld. *Bannerman v. Dept. of Youth Authority*, 436 F. Supp. 1273 (N.D. Cal. 1977); *Branch v. DuBois*, 418 F. Supp. 1128 (N.D. Ill. 1976); *Ballou v. State, Dept. of Civil Service*, 372 A.2d 333 (N.J. App. Div. 1977), *aff'd*, 46 U.S.L.W. 2454 (N.J. 1978). Three of the decisions distinguish *Anthony v. Commonwealth*, *supra*, as having been based on a stronger negative effect on women than those courts faced. The California court, however, states that the approach used in *Anthony* was "rejected in *Washington v. Davis*", *Bannerman*, 436 F. Supp. at 1280. Each court had little trouble in concluding that no intent to harm women was present, even in the "absolute" preference at issue in New Jersey. The Illinois court's language is representative.

While those who never served in the armed forces, those who served at times not within the statutory periods and women who are not veterans suffer a disadvantage in hiring and promotion, this is an incidental result of a statute intended to reward veterans and not one intended to discriminate against men and women who are not veterans or those whose service was in times of limited military action.

Branch v. DuBois, 418 F. Supp. at 1133.⁹

⁹This court would seem to have agreed in its earlier opinion, where the majority stated that

[t]he Massachusetts Veterans' Preference was not enacted for the purpose of disqualifying women from receiving civil service appointments.

Anthony v. Commonwealth of Massachusetts, 415 F. Supp. 485, 495 (1976). Nowhere in his opinion has Judge Tauro said that the Massachusetts legislature intended to harm job opportunities for women or that limiting

The impact of the statute at issue here does not approach the extremes described in *Arlington Heights*, *supra* at 266, and plaintiff must prove intent by other evidence. This she has not done. The question: Would the veterans' preference statute have been enacted if women were represented in the armed services in such numbers that the preference would have no discriminatory effect? has not been addressed by plaintiff, and she has given the court absolutely no reason to answer this question in the negative. She has failed to make out a *prima facie* case of discriminatory intent. See *Mt. Healthy City Board of Ed. v. Doyle*, 429 U.S. 274, 287 (1977). In light of *Washington v. Davis* I would not hold, as the majority does, that the Massachusetts Veterans' Preference statute violates the Equal Protection Clause of the Fourteenth Amendment. I dissent.

FRANK J. MURRAY,
Senior District Judge.

such opportunities was a motive in enactment of the legislation, and that, of course, is precisely what must be shown. All Judge Tauro will say is that the legislature's "clear intent was to benefit veterans even at the expense of women", *ante* at 7. This says nothing about motive and is entirely consistent with a finding that the legislature saw the impact on women as extremely regrettable but unavoidable.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS.

HELEN B. FEENEY,
PLAINTIFF,

v .

CIVIL ACTION
No. 75-1991-T

THE COMMONWEALTH OF
MASSACHUSETTS, ET AL.,
DEFENDANTS,

Notice of Appeal to the Supreme Court
of the United States.

Notice is hereby given that the Defendants, acting by and through their attorneys and pursuant to Supreme Court Rule 10, hereby appeal the judgment of this Court to the Supreme Court of the United States. In accordance with the provisions of Supreme Court Rule 10(2), the Defendants specify:

1. The parties taking the appeal are the Personnel Administrator of the Commonwealth (referred to as the Massachusetts Director of Civil Service in the pleadings) and the members of the Massachusetts Civil Service Commission, who are collectively referred to herein as the Defendants;

2. Defendants appeal from paragraph 2 of the Judgment and Order of the Court entered on May 3, 1978, and from subparagraph (a) of the order enjoining Defendants from utilizing Mass. Gen. Laws c. 31, § 23 (1971) (The Massachusetts Veterans' Preference Act) in any future selection of persons to fill civil service positions with the Commonwealth; and

3. Direct appeal to the Supreme Court of the United States is authorized by 28 U.S.C. 1253.

Respectfully submitted,
By Their Attorneys,
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DATED: June 13, 1978.

[Certificate of Service omitted in printing.]
